

As Introduced

125th General Assembly
Regular Session
2003-2004

S. B. No. 178

Senators Spada, Austria

A BILL

To amend sections 109.572, 313.12, 2108.50, 2151.421, 1
2311.14, 2930.03, 5120.173, 5123.081, 5123.50, 2
5123.51, 5123.61, 5123.99, 5126.28, 5126.30, and 3
5126.33 and to enact sections 2108.521, 2152.821, 4
2903.341, 2930.061, 2945.482, 2945.491, 5123.032, 5
5123.541, 5123.542, 5123.614, 5126.058, 5126.331, 6
5126.332, and 5126.333 of the Revised Code to 7
implement the recommendations of the MR/DD Victims 8
of Crime Task Force, to make related changes in 9
the law, and to provide a mechanism for the 10
closing of developmental centers of the Department 11
of Mental Retardation and Developmental 12
Disabilities that involves independent studies and 13
public hearings. 14

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 109.572, 313.12, 2108.50, 2151.421, 15
2311.14, 2930.03, 5120.173, 5123.081, 5123.50, 5123.51, 5123.61, 16
5123.99, 5126.28, 5126.30, and 5126.33 be amended and sections 17
2108.521, 2152.821, 2903.341, 2930.061, 2945.482, 2945.491, 18
5123.032, 5123.541, 5123.542, 5123.614, 5126.058, 5126.331, 19
5126.332, and 5126.333 of the Revised Code be enacted to read as 20
follows: 21

Sec. 109.572. (A)(1) Upon receipt of a request pursuant to 22
section 2151.86, 3301.32, 3301.541, 3319.39, 5104.012, 5104.013, 23
or 5153.111 of the Revised Code, a completed form prescribed 24
pursuant to division (C)(1) of this section, and a set of 25
fingerprint impressions obtained in the manner described in 26
division (C)(2) of this section, the superintendent of the bureau 27
of criminal identification and investigation shall conduct a 28
criminal records check in the manner described in division (B) of 29
this section to determine whether any information exists that 30
indicates that the person who is the subject of the request 31
previously has been convicted of or pleaded guilty to any of the 32
following: 33

(a) A violation of section 2903.01, 2903.02, 2903.03, 34
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 35
2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 36
2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2907.23, 37
2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 38
2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 39
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05, 40
2925.06, or 3716.11 of the Revised Code, felonious sexual 41
penetration in violation of former section 2907.12 of the Revised 42
Code, a violation of section 2905.04 of the Revised Code as it 43
existed prior to July 1, 1996, a violation of section 2919.23 of 44
the Revised Code that would have been a violation of section 45
2905.04 of the Revised Code as it existed prior to July 1, 1996, 46
had the violation been committed prior to that date, or a 47
violation of section 2925.11 of the Revised Code that is not a 48
minor drug possession offense; 49

(b) A violation of an existing or former law of this state, 50
any other state, or the United States that is substantially 51
equivalent to any of the offenses listed in division (A)(1)(a) of 52

this section.

53

(2) On receipt of a request pursuant to section 5123.081 of the Revised Code with respect to an applicant for employment in any position with the department of mental retardation and developmental disabilities, pursuant to section 5126.28 of the Revised Code with respect to an applicant for employment in any position with a county board of mental retardation and developmental disabilities, or pursuant to section 5126.281 of the Revised Code with respect to an applicant for employment in a direct services position with an entity contracting with a county board for employment, a completed form prescribed pursuant to division (C)(1) of this section, and a set of fingerprint impressions obtained in the manner described in division (C)(2) of this section, the superintendent of the bureau of criminal identification and investigation shall conduct a criminal records check. The superintendent shall conduct the criminal records check in the manner described in division (B) of this section to determine whether any information exists that indicates that the person who is the subject of the request has been convicted of or pleaded guilty to any of the following:

54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2903.341, 2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, or 3716.11 of the Revised Code;

73
74
75
76
77
78
79
80

(b) An existing or former municipal ordinance or law of this state, any other state, or the United States that is substantially equivalent to any of the offenses listed in division (A)(2)(a) of this section.

81
82
83
84

(3) On receipt of a request pursuant to section 173.41, 85
3712.09, 3721.121, or 3722.151 of the Revised Code, a completed 86
form prescribed pursuant to division (C)(1) of this section, and a 87
set of fingerprint impressions obtained in the manner described in 88
division (C)(2) of this section, the superintendent of the bureau 89
of criminal identification and investigation shall conduct a 90
criminal records check with respect to any person who has applied 91
for employment in a position that involves providing direct care 92
to an older adult. The superintendent shall conduct the criminal 93
records check in the manner described in division (B) of this 94
section to determine whether any information exists that indicates 95
that the person who is the subject of the request previously has 96
been convicted of or pleaded guilty to any of the following: 97

(a) A violation of section 2903.01, 2903.02, 2903.03, 98
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 99
2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05, 100
2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31, 101
2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 102
2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 103
2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36, 104
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13, 105
2925.22, 2925.23, or 3716.11 of the Revised Code; 106

(b) An existing or former law of this state, any other state, 107
or the United States that is substantially equivalent to any of 108
the offenses listed in division (A)(3)(a) of this section. 109

(4) On receipt of a request pursuant to section 3701.881 of 110
the Revised Code with respect to an applicant for employment with 111
a home health agency as a person responsible for the care, 112
custody, or control of a child, a completed form prescribed 113
pursuant to division (C)(1) of this section, and a set of 114
fingerprint impressions obtained in the manner described in 115
division (C)(2) of this section, the superintendent of the bureau 116

of criminal identification and investigation shall conduct a
criminal records check. The superintendent shall conduct the
criminal records check in the manner described in division (B) of
this section to determine whether any information exists that
indicates that the person who is the subject of the request
previously has been convicted of or pleaded guilty to any of the
following:

(a) A violation of section 2903.01, 2903.02, 2903.03,
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34,
2905.01, 2905.02, 2905.04, 2905.05, 2907.02, 2907.03, 2907.04,
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.21,
2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322,
2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22,
2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03,
2925.04, 2925.05, 2925.06, or 3716.11 of the Revised Code or a
violation of section 2925.11 of the Revised Code that is not a
minor drug possession offense;

(b) An existing or former law of this state, any other state,
or the United States that is substantially equivalent to any of
the offenses listed in division (A)(4)(a) of this section.

(5) On receipt of a request pursuant to section 5111.95 or
5111.96 of the Revised Code with respect to an applicant for
employment with a waiver agency participating in a department of
job and family services administered home and community-based
waiver program or an independent provider participating in a
department administered home and community-based waiver program in
a position that involves providing home and community-based waiver
services to consumers with disabilities, a completed form
prescribed pursuant to division (C)(1) of this section, and a set
of fingerprint impressions obtained in the manner described in
division (C)(2) of this section, the superintendent of the bureau
of criminal identification and investigation shall conduct a

criminal records check. The superintendent shall conduct the
criminal records check in the manner described in division (B) of
this section to determine whether any information exists that
indicates that the person who is the subject of the request
previously has been convicted of or pleaded guilty to any of the
following:

(a) A violation of section 2903.01, 2903.02, 2903.03,
2903.04, 2903.041, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21,
2903.34, 2905.01, 2905.02, 2905.05, 2905.11, 2905.12, 2907.02,
2907.03, 2907.04, 2907.05, 2907.06, 2907.07, 2907.08, 2907.09,
2907.21, 2907.22, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321,
2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2911.13,
2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.40,
2913.43, 2913.47, 2913.51, 2919.12, 2919.24, 2919.25, 2921.36,
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2925.05,
2925.06, 2925.11, 2925.13, 2925.22, 2925.23, or 3716.11 of the
Revised Code, felonious sexual penetration in violation of former
section 2907.12 of the Revised Code, a violation of section
2905.04 of the Revised Code as it existed prior to July 1, 1996, a
violation of section 2919.23 of the Revised Code that would have
been a violation of section 2905.04 of the Revised Code as it
existed prior to July 1, 1996, had the violation been committed
prior to that date;

(b) An existing or former law of this state, any other state,
or the United States that is substantially equivalent to any of
the offenses listed in division (A)(5)(a) of this section.

(6) On receipt of a request pursuant to section 3701.881 of
the Revised Code with respect to an applicant for employment with
a home health agency in a position that involves providing direct
care to an older adult, a completed form prescribed pursuant to
division (C)(1) of this section, and a set of fingerprint
impressions obtained in the manner described in division (C)(2) of

this section, the superintendent of the bureau of criminal
identification and investigation shall conduct a criminal records
check. The superintendent shall conduct the criminal records check
in the manner described in division (B) of this section to
determine whether any information exists that indicates that the
person who is the subject of the request previously has been
convicted of or pleaded guilty to any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03,
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34,
2905.01, 2905.02, 2905.11, 2905.12, 2907.02, 2907.03, 2907.05,
2907.06, 2907.07, 2907.08, 2907.09, 2907.12, 2907.25, 2907.31,
2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11,
2911.12, 2911.13, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21,
2913.31, 2913.40, 2913.43, 2913.47, 2913.51, 2919.25, 2921.36,
2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.11, 2925.13,
2925.22, 2925.23, or 3716.11 of the Revised Code;

(b) An existing or former law of this state, any other state,
or the United States that is substantially equivalent to any of
the offenses listed in division (A)(6)(a) of this section.

(7) When conducting a criminal records check upon a request
pursuant to section 3319.39 of the Revised Code for an applicant
who is a teacher, in addition to the determination made under
division (A)(1) of this section, the superintendent shall
determine whether any information exists that indicates that the
person who is the subject of the request previously has been
convicted of or pleaded guilty to any offense specified in section
3319.31 of the Revised Code.

(8) When conducting a criminal records check on a request
pursuant to section 2151.86 of the Revised Code for a person who
is a prospective foster caregiver or who is eighteen years old or
older and resides in the home of a prospective foster caregiver,

the superintendent, in addition to the determination made under 212
division (A)(1) of this section, shall determine whether any 213
information exists that indicates that the person has been 214
convicted of or pleaded guilty to a violation of: 215

(a) Section 2909.02 or 2909.03 of the Revised Code; 216

(b) An existing or former law of this state, any other state, 217
or the United States that is substantially equivalent to section 218
2909.02 or 2909.03 of the Revised Code. 219

(9) Not later than thirty days after the date the 220
superintendent receives the request, completed form, and 221
fingerprint impressions, the superintendent shall send the person, 222
board, or entity that made the request any information, other than 223
information the dissemination of which is prohibited by federal 224
law, the superintendent determines exists with respect to the 225
person who is the subject of the request that indicates that the 226
person previously has been convicted of or pleaded guilty to any 227
offense listed or described in division (A)(1), (2), (3), (4), 228
(5), (6), (7), or (8) of this section, as appropriate. The 229
superintendent shall send the person, board, or entity that made 230
the request a copy of the list of offenses specified in division 231
(A)(1), (2), (3), (4), (5), (6), (7), or (8) of this section, as 232
appropriate. If the request was made under section 3701.881 of the 233
Revised Code with regard to an applicant who may be both 234
responsible for the care, custody, or control of a child and 235
involved in providing direct care to an older adult, the 236
superintendent shall provide a list of the offenses specified in 237
divisions (A)(4) and (6) of this section. 238

(B) The superintendent shall conduct any criminal records 239
check requested under section 173.41, 2151.86, 3301.32, 3301.541, 240
3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 5104.012, 241
5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 5126.281, or 242

5153.111 of the Revised Code as follows: 243

(1) The superintendent shall review or cause to be reviewed 244
any relevant information gathered and compiled by the bureau under 245
division (A) of section 109.57 of the Revised Code that relates to 246
the person who is the subject of the request, including any 247
relevant information contained in records that have been sealed 248
under section 2953.32 of the Revised Code; 249

(2) If the request received by the superintendent asks for 250
information from the federal bureau of investigation, the 251
superintendent shall request from the federal bureau of 252
investigation any information it has with respect to the person 253
who is the subject of the request and shall review or cause to be 254
reviewed any information the superintendent receives from that 255
bureau. 256

(C)(1) The superintendent shall prescribe a form to obtain 257
the information necessary to conduct a criminal records check from 258
any person for whom a criminal records check is required by 259
section 173.41, 2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 260
3712.09, 3721.121, 3722.151, 5104.012, 5104.013, 5111.95, 5111.96, 261
5123.081, 5126.28, 5126.281, or 5153.111 of the Revised Code. The 262
form that the superintendent prescribes pursuant to this division 263
may be in a tangible format, in an electronic format, or in both 264
tangible and electronic formats. 265

(2) The superintendent shall prescribe standard impression 266
sheets to obtain the fingerprint impressions of any person for 267
whom a criminal records check is required by section 173.41, 268
2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 269
3722.151, 5104.012, 5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 270
5126.281, or 5153.111 of the Revised Code. Any person for whom a 271
records check is required by any of those sections shall obtain 272
the fingerprint impressions at a county sheriff's office, 273

municipal police department, or any other entity with the ability 274
to make fingerprint impressions on the standard impression sheets 275
prescribed by the superintendent. The office, department, or 276
entity may charge the person a reasonable fee for making the 277
impressions. The standard impression sheets the superintendent 278
prescribes pursuant to this division may be in a tangible format, 279
in an electronic format, or in both tangible and electronic 280
formats. 281

(3) Subject to division (D) of this section, the 282
superintendent shall prescribe and charge a reasonable fee for 283
providing a criminal records check requested under section 173.41, 284
2151.86, 3301.32, 3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 285
3722.151, 5104.012, 5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 286
5126.281, or 5153.111 of the Revised Code. The person making a 287
criminal records request under section 173.41, 2151.86, 3301.32, 288
3301.541, 3319.39, 3701.881, 3712.09, 3721.121, 3722.151, 289
5104.012, 5104.013, 5111.95, 5111.96, 5123.081, 5126.28, 5126.281, 290
or 5153.111 of the Revised Code shall pay the fee prescribed 291
pursuant to this division. A person making a request under section 292
3701.881 of the Revised Code for a criminal records check for an 293
applicant who may be both responsible for the care, custody, or 294
control of a child and involved in providing direct care to an 295
older adult shall pay one fee for the request. 296

(4) The superintendent of the bureau of criminal 297
identification and investigation may prescribe methods of 298
forwarding fingerprint impressions and information necessary to 299
conduct a criminal records check, which methods shall include, but 300
not be limited to, an electronic method. 301

(D) A determination whether any information exists that 302
indicates that a person previously has been convicted of or 303
pleaded guilty to any offense listed or described in division 304
(A)(1)(a) or (b), (A)(2)(a) or (b), (A)(3)(a) or (b), (A)(4)(a) or 305

(b), (A)(5)(a) or (b), (A)(6), (A)(7)(a) or (b), or (A)(8)(a) or
(b) of this section that is made by the superintendent with
respect to information considered in a criminal records check in
accordance with this section is valid for the person who is the
subject of the criminal records check for a period of one year
from the date upon which the superintendent makes the
determination. During the period in which the determination in
regard to a person is valid, if another request under this section
is made for a criminal records check for that person, the
superintendent shall provide the information that is the basis for
the superintendent's initial determination at a lower fee than the
fee prescribed for the initial criminal records check.

(E) As used in this section:

(1) "Criminal records check" means any criminal records check
conducted by the superintendent of the bureau of criminal
identification and investigation in accordance with division (B)
of this section.

(2) "Home and community-based waiver services" and "waiver
agency" have the same meanings as in section 5111.95 of the
Revised Code.

(3) "Independent provider" has the same meaning as in section
5111.96 of the Revised Code.

(4) "Minor drug possession offense" has the same meaning as
in section 2925.01 of the Revised Code.

(5) "Older adult" means a person age sixty or older.

Sec. 313.12. (A) When any person dies as a result of criminal
or other violent means, by casualty, by suicide, or in any
suspicious or unusual manner, ~~or~~ when any person, including a
child under two years of age, dies suddenly when in apparent good
health, or when any mentally retarded person or developmentally

disabled person dies regardless of the circumstances, the 336
physician called in attendance, or any member of an ambulance 337
service, emergency squad, or law enforcement agency who obtains 338
knowledge thereof arising from ~~his~~ the person's duties, shall 339
immediately notify the office of the coroner of the known facts 340
concerning the time, place, manner, and circumstances of the 341
death, and any other information ~~which~~ that is required pursuant 342
to sections 313.01 to 313.22 of the Revised Code. In such cases, 343
if a request is made for cremation, the funeral director called in 344
attendance shall immediately notify the coroner. 345

(B) As used in this section, "mentally retarded person" and 346
"developmentally disabled person" have the same meanings as in 347
section 5123.01 of the Revised Code. 348

Sec. 2108.50. (A) ~~An~~ Subject to section 2108.521 of the 349
Revised Code, an autopsy or post-mortem examination may be 350
performed upon the body of a deceased person by a licensed 351
physician or surgeon if consent has been given in the order named 352
by one of the following persons of sound mind and eighteen years 353
of age or older in a written instrument executed by the person or 354
on the person's behalf at the person's express direction: 355

(1) The deceased person during the deceased person's 356
lifetime; 357

(2) The decedent's spouse; 358

(3) If there is no surviving spouse, if the address of the 359
surviving spouse is unknown or outside the United States, if the 360
surviving spouse is physically or mentally unable or incapable of 361
giving consent, or if the deceased person was separated and living 362
apart from such surviving spouse, then a person having the first 363
named degree of relationship in the following list in which a 364
relative of the deceased person survives and is physically and 365

mentally able and capable of giving consent may execute consent:	366
(a) Children;	367
(b) Parents;	368
(c) Brothers or sisters.	369
(4) If there are no surviving persons of any degree of	370
relationship listed in division (A)(3) of this section, any other	371
relative or person who assumes custody of the body for burial- <u>i</u>	372
(5) A person authorized by written instrument executed by the	373
deceased person to make arrangements for burial- <u>i</u>	374
(6) A person who, at the time of death of the deceased	375
person, was serving as guardian of the person for the deceased	376
person.	377
(B) Consent to an autopsy or post-mortem examination <u>given</u>	378
<u>under this section</u> may be revoked only by the person executing the	379
consent and in the same manner as required for execution of	380
consent under this section.	381
(C) As used in this section, "written instrument" includes a	382
telegram or cablegram.	383
<u>Sec. 2108.521. (A) If a mentally retarded person or a</u>	384
<u>developmentally disabled person dies, if the department of mental</u>	385
<u>retardation and developmental disabilities or a county board of</u>	386
<u>mental retardation and developmental disabilities has a good faith</u>	387
<u>reason to believe that the deceased person's death occurred under</u>	388
<u>suspicious circumstances, if the coroner was apprised of the</u>	389
<u>circumstances of the death, and if the coroner after being so</u>	390
<u>apprised of the circumstances declines to conduct an autopsy, the</u>	391
<u>department or the board may file a petition in a court of common</u>	392
<u>pleas seeking an order authorizing an autopsy or post-mortem</u>	393
<u>examination under this section.</u>	394

(B) Upon the filing of a petition under division (A) of this section, the court may conduct, but is not required to conduct, a hearing on the petition. The court may determine whether to grant the petition without a hearing. The department or board, and all other interested parties, may submit information and statements to the court that are relevant to the petition, and, if the court conducts a hearing, may present evidence and testimony at the hearing. The court shall order the requested autopsy or post-mortem examination if it finds that, under the circumstances, the department or board has demonstrated a need for the autopsy or post-mortem examination. The court shall order an autopsy or post-mortem examination in the circumstances specified in this division regardless of whether any consent has been given, or has been given and withdrawn, under section 2108.50 of the Revised Code, and regardless of whether any information was presented to the coroner pursuant to section 313.131 of the Revised Code or to the court under this section regarding an autopsy being contrary to the deceased person's religious beliefs.

(C) An autopsy or post-mortem examination ordered under this section may be performed upon the body of the deceased person by a licensed physician or surgeon. The court may identify in the order the person who is to perform the autopsy or post-mortem examination. If an autopsy or post-mortem examination is ordered under this section, the department or board that requested the autopsy or examination shall pay the physician or surgeon who performs the autopsy or examination for costs and expenses incurred in performing the autopsy or examination.

Sec. 2151.421. (A)(1)(a) No person described in division (A)(1)(b) of this section who is acting in an official or professional capacity and knows or suspects that a child under eighteen years of age or a mentally retarded, developmentally

disabled, or physically impaired child under twenty-one years of 426
age has suffered or faces a threat of suffering any physical or 427
mental wound, injury, disability, or condition of a nature that 428
reasonably indicates abuse or neglect of the child, shall fail to 429
immediately report that knowledge or suspicion to the entity or 430
persons specified in this division. Except as provided in section 431
5120.173 of the Revised Code, the person making the report shall 432
make it to the public children services agency or a municipal or 433
county peace officer in the county in which the child resides or 434
in which the abuse or neglect is occurring or has occurred. In the 435
circumstances described in section 5120.173 of the Revised Code, 436
the person making the report shall make it to the entity specified 437
in that section. 438

(b) Division (A)(1)(a) of this section applies to any person 439
who is an attorney; physician, including a hospital intern or 440
resident; dentist; podiatrist; practitioner of a limited branch of 441
medicine as specified in section 4731.15 of the Revised Code; 442
registered nurse; licensed practical nurse; visiting nurse; other 443
health care professional; licensed psychologist; licensed school 444
psychologist; independent marriage and family therapist or 445
marriage and family therapist; speech pathologist or audiologist; 446
coroner; administrator or employee of a child day-care center; 447
administrator or employee of a residential camp or child day camp; 448
administrator or employee of a certified child care agency or 449
other public or private children services agency; school teacher; 450
school employee; school authority; person engaged in social work 451
or the practice of professional counseling; agent of a county 452
humane society; ~~or~~ a person rendering spiritual treatment through 453
prayer in accordance with the tenets of a well-recognized 454
religion; superintendent, board member, or employee of a county 455
board of mental retardation; investigative agent contracted with 456
by a county board of mental retardation; or employee of the 457

department of mental retardation and developmental disabilities. 458

(2) An attorney or a physician is not required to make a 459
report pursuant to division (A)(1) of this section concerning any 460
communication the attorney or physician receives from a client or 461
patient in an attorney-client or physician-patient relationship, 462
if, in accordance with division (A) or (B) of section 2317.02 of 463
the Revised Code, the attorney or physician could not testify with 464
respect to that communication in a civil or criminal proceeding, 465
except that the client or patient is deemed to have waived any 466
testimonial privilege under division (A) or (B) of section 2317.02 467
of the Revised Code with respect to that communication and the 468
attorney or physician shall make a report pursuant to division 469
(A)(1) of this section with respect to that communication, if all 470
of the following apply: 471

(a) The client or patient, at the time of the communication, 472
is either a child under eighteen years of age or a mentally 473
retarded, developmentally disabled, or physically impaired person 474
under twenty-one years of age. 475

(b) The attorney or physician knows or suspects, as a result 476
of the communication or any observations made during that 477
communication, that the client or patient has suffered or faces a 478
threat of suffering any physical or mental wound, injury, 479
disability, or condition of a nature that reasonably indicates 480
abuse or neglect of the client or patient. 481

(c) The attorney-client or physician-patient relationship 482
does not arise out of the client's or patient's attempt to have an 483
abortion without the notification of her parents, guardian, or 484
custodian in accordance with section 2151.85 of the Revised Code. 485

(B) Anyone, who knows or suspects that a child under eighteen 486
years of age or a mentally retarded, developmentally disabled, or 487
physically impaired person under twenty-one years of age has 488

suffered or faces a threat of suffering any physical or mental 489
wound, injury, disability, or other condition of a nature that 490
reasonably indicates abuse or neglect of the child may report or 491
cause reports to be made of that knowledge or suspicion to the 492
entity or persons specified in this division. Except as provided 493
in section 5120.173 of the Revised Code, a person making a report 494
or causing a report to be made under this division shall make it 495
or cause it to be made to the public children services agency or 496
to a municipal or county peace officer. In the circumstances 497
described in section 5120.173 of the Revised Code, a person making 498
a report or causing a report to be made under this division shall 499
make it or cause it to be made to the entity specified in that 500
section. 501

(C) Any report made pursuant to division (A) or (B) of this 502
section shall be made forthwith either by telephone or in person 503
and shall be followed by a written report, if requested by the 504
receiving agency or officer. The written report shall contain: 505

(1) The names and addresses of the child and the child's 506
parents or the person or persons having custody of the child, if 507
known; 508

(2) The child's age and the nature and extent of the child's 509
known or suspected injuries, abuse, or neglect or of the known or 510
suspected threat of injury, abuse, or neglect, including any 511
evidence of previous injuries, abuse, or neglect; 512

(3) Any other information that might be helpful in 513
establishing the cause of the known or suspected injury, abuse, or 514
neglect or of the known or suspected threat of injury, abuse, or 515
neglect. 516

Any person, who is required by division (A) of this section 517
to report known or suspected child abuse or child neglect, may 518
take or cause to be taken color photographs of areas of trauma 519

visible on a child and, if medically indicated, cause to be 520
performed radiological examinations of the child. 521

(D)(1) When a municipal or county peace officer receives a 522
report concerning the possible abuse or neglect of a child or the 523
possible threat of abuse or neglect of a child, upon receipt of 524
the report, the municipal or county peace officer who receives the 525
report shall refer the report to the appropriate public children 526
services agency. 527

(2) When a public children services agency receives a report 528
pursuant to this division or division (A) or (B) of this section, 529
upon receipt of the report, the public children services agency 530
shall comply with section 2151.422 of the Revised Code. 531

(E) No township, municipal, or county peace officer shall 532
remove a child about whom a report is made pursuant to this 533
section from the child's parents, stepparents, or guardian or any 534
other persons having custody of the child without consultation 535
with the public children services agency, unless, in the judgment 536
of the officer, and, if the report was made by physician, the 537
physician, immediate removal is considered essential to protect 538
the child from further abuse or neglect. The agency that must be 539
consulted shall be the agency conducting the investigation of the 540
report as determined pursuant to section 2151.422 of the Revised 541
Code. 542

(F)(1) Except as provided in section 2151.422 of the Revised 543
Code, the public children services agency shall investigate, 544
within twenty-four hours, each report of known or suspected child 545
abuse or child neglect and of a known or suspected threat of child 546
abuse or child neglect that is referred to it under this section 547
to determine the circumstances surrounding the injuries, abuse, or 548
neglect or the threat of injury, abuse, or neglect, the cause of 549
the injuries, abuse, neglect, or threat, and the person or persons 550
responsible. The investigation shall be made in cooperation with 551

the law enforcement agency and in accordance with the memorandum 552
of understanding prepared under division (J) of this section. A 553
failure to make the investigation in accordance with the 554
memorandum is not grounds for, and shall not result in, the 555
dismissal of any charges or complaint arising from the report or 556
the suppression of any evidence obtained as a result of the report 557
and does not give, and shall not be construed as giving, any 558
rights or any grounds for appeal or post-conviction relief to any 559
person. The public children services agency shall report each case 560
to a central registry which the department of job and family 561
services shall maintain in order to determine whether prior 562
reports have been made in other counties concerning the child or 563
other principals in the case. The public children services agency 564
shall submit a report of its investigation, in writing, to the law 565
enforcement agency. 566

(2) The public children services agency shall make any 567
recommendations to the county prosecuting attorney or city 568
director of law that it considers necessary to protect any 569
children that are brought to its attention. 570

(G)(1)(a) Except as provided in division (H)(3) of this 571
section, anyone or any hospital, institution, school, health 572
department, or agency participating in the making of reports under 573
division (A) of this section, anyone or any hospital, institution, 574
school, health department, or agency participating in good faith 575
in the making of reports under division (B) of this section, and 576
anyone participating in good faith in a judicial proceeding 577
resulting from the reports, shall be immune from any civil or 578
criminal liability for injury, death, or loss to person or 579
property that otherwise might be incurred or imposed as a result 580
of the making of the reports or the participation in the judicial 581
proceeding. 582

(b) Notwithstanding section 4731.22 of the Revised Code, the 583

physician-patient privilege shall not be a ground for excluding 584
evidence regarding a child's injuries, abuse, or neglect, or the 585
cause of the injuries, abuse, or neglect in any judicial 586
proceeding resulting from a report submitted pursuant to this 587
section. 588

(2) In any civil or criminal action or proceeding in which it 589
is alleged and proved that participation in the making of a report 590
under this section was not in good faith or participation in a 591
judicial proceeding resulting from a report made under this 592
section was not in good faith, the court shall award the 593
prevailing party reasonable attorney's fees and costs and, if a 594
civil action or proceeding is voluntarily dismissed, may award 595
reasonable attorney's fees and costs to the party against whom the 596
civil action or proceeding is brought. 597

(H)(1) Except as provided in divisions (H)(4), (M), and (N) 598
of this section, a report made under this section is confidential. 599
The information provided in a report made pursuant to this section 600
and the name of the person who made the report shall not be 601
released for use, and shall not be used, as evidence in any civil 602
action or proceeding brought against the person who made the 603
report. In a criminal proceeding, the report is admissible in 604
evidence in accordance with the Rules of Evidence and is subject 605
to discovery in accordance with the Rules of Criminal Procedure. 606

(2) No person shall permit or encourage the unauthorized 607
dissemination of the contents of any report made under this 608
section. 609

(3) A person who knowingly makes or causes another person to 610
make a false report under division (B) of this section that 611
alleges that any person has committed an act or omission that 612
resulted in a child being an abused child or a neglected child is 613
guilty of a violation of section 2921.14 of the Revised Code. 614

(4) If a report is made pursuant to division (A) or (B) of this section and the child who is the subject of the report dies for any reason at any time after the report is made, but before the child attains eighteen years of age, the public children services agency or municipal or county peace officer to which the report was made or referred, on the request of the child fatality review board, shall submit a summary sheet of information providing a summary of the report to the review board of the county in which the deceased child resided at the time of death. On the request of the review board, the agency or peace officer may, at its discretion, make the report available to the review board.

(5) A public children services agency shall advise a person alleged to have inflicted abuse or neglect on a child who is the subject of a report made pursuant to this section in writing of the disposition of the investigation. The agency shall not provide to the person any information that identifies the person who made the report, statements of witnesses, or police or other investigative reports.

(I) Any report that is required by this section, other than a report that is made to the state highway patrol as described in section 5120.173 of the Revised Code, shall result in protective services and emergency supportive services being made available by the public children services agency on behalf of the children about whom the report is made, in an effort to prevent further neglect or abuse, to enhance their welfare, and, whenever possible, to preserve the family unit intact. The agency required to provide the services shall be the agency conducting the investigation of the report pursuant to section 2151.422 of the Revised Code.

(J)(1) Each public children services agency shall prepare a memorandum of understanding that is signed by all of the

following: 647

(a) If there is only one juvenile judge in the county, the 648
juvenile judge of the county or the juvenile judge's 649
representative; 650

(b) If there is more than one juvenile judge in the county, a 651
juvenile judge or the juvenile judges' representative selected by 652
the juvenile judges or, if they are unable to do so for any 653
reason, the juvenile judge who is senior in point of service or 654
the senior juvenile judge's representative; 655

(c) The county peace officer; 656

(d) All chief municipal peace officers within the county; 657

(e) Other law enforcement officers handling child abuse and 658
neglect cases in the county; 659

(f) The prosecuting attorney of the county; 660

(g) If the public children services agency is not the county 661
department of job and family services, the county department of 662
job and family services; 663

(h) The county humane society. 664

(2) A memorandum of understanding shall set forth the normal 665
operating procedure to be employed by all concerned officials in 666
the execution of their respective responsibilities under this 667
section and division (C) of section 2919.21, division (B)(1) of 668
section 2919.22, division (B) of section 2919.23, and section 669
2919.24 of the Revised Code and shall have as two of its primary 670
goals the elimination of all unnecessary interviews of children 671
who are the subject of reports made pursuant to division (A) or 672
(B) of this section and, when feasible, providing for only one 673
interview of a child who is the subject of any report made 674
pursuant to division (A) or (B) of this section. A failure to 675
follow the procedure set forth in the memorandum by the concerned 676

officials is not grounds for, and shall not result in, the 677
dismissal of any charges or complaint arising from any reported 678
case of abuse or neglect or the suppression of any evidence 679
obtained as a result of any reported child abuse or child neglect 680
and does not give, and shall not be construed as giving, any 681
rights or any grounds for appeal or post-conviction relief to any 682
person. 683

(3) A memorandum of understanding shall include all of the 684
following: 685

(a) The roles and responsibilities for handling emergency and 686
nonemergency cases of abuse and neglect; 687

(b) Standards and procedures to be used in handling and 688
coordinating investigations of reported cases of child abuse and 689
reported cases of child neglect, methods to be used in 690
interviewing the child who is the subject of the report and who 691
allegedly was abused or neglected, and standards and procedures 692
addressing the categories of persons who may interview the child 693
who is the subject of the report and who allegedly was abused or 694
neglected. 695

(K)(1) Except as provided in division (K)(4) of this section, 696
a person who is required to make a report pursuant to division (A) 697
of this section may make a reasonable number of requests of the 698
public children services agency that receives or is referred the 699
report to be provided with the following information: 700

(a) Whether the agency has initiated an investigation of the 701
report; 702

(b) Whether the agency is continuing to investigate the 703
report; 704

(c) Whether the agency is otherwise involved with the child 705
who is the subject of the report; 706

(d) The general status of the health and safety of the child 707
who is the subject of the report; 708

(e) Whether the report has resulted in the filing of a 709
complaint in juvenile court or of criminal charges in another 710
court. 711

(2) A person may request the information specified in 712
division (K)(1) of this section only if, at the time the report is 713
made, the person's name, address, and telephone number are 714
provided to the person who receives the report. 715

When a municipal or county peace officer or employee of a 716
public children services agency receives a report pursuant to 717
division (A) or (B) of this section the recipient of the report 718
shall inform the person of the right to request the information 719
described in division (K)(1) of this section. The recipient of the 720
report shall include in the initial child abuse or child neglect 721
report that the person making the report was so informed and, if 722
provided at the time of the making of the report, shall include 723
the person's name, address, and telephone number in the report. 724

Each request is subject to verification of the identity of 725
the person making the report. If that person's identity is 726
verified, the agency shall provide the person with the information 727
described in division (K)(1) of this section a reasonable number 728
of times, except that the agency shall not disclose any 729
confidential information regarding the child who is the subject of 730
the report other than the information described in those 731
divisions. 732

(3) A request made pursuant to division (K)(1) of this 733
section is not a substitute for any report required to be made 734
pursuant to division (A) of this section. 735

(4) If an agency other than the agency that received or was 736
referred the report is conducting the investigation of the report 737

pursuant to section 2151.422 of the Revised Code, the agency 738
conducting the investigation shall comply with the requirements of 739
division (K) of this section. 740

(L) The director of job and family services shall adopt rules 741
in accordance with Chapter 119. of the Revised Code to implement 742
this section. The department of job and family services may enter 743
into a plan of cooperation with any other governmental entity to 744
aid in ensuring that children are protected from abuse and 745
neglect. The department shall make recommendations to the attorney 746
general that the department determines are necessary to protect 747
children from child abuse and child neglect. 748

(M) No later than the end of the day following the day on 749
which a public children services agency receives a report of 750
alleged child abuse or child neglect, or a report of an alleged 751
threat of child abuse or child neglect, that allegedly occurred in 752
or involved an out-of-home care entity, the agency shall provide 753
written notice of the allegations contained in and the person 754
named as the alleged perpetrator in the report to the 755
administrator, director, or other chief administrative officer of 756
the out-of-home care entity that is the subject of the report 757
unless the administrator, director, or other chief administrative 758
officer is named as an alleged perpetrator in the report. If the 759
administrator, director, or other chief administrative officer of 760
an out-of-home care entity is named as an alleged perpetrator in a 761
report of alleged child abuse or child neglect, or a report of an 762
alleged threat of child abuse or child neglect, that allegedly 763
occurred in or involved the out-of-home care entity, the agency 764
shall provide the written notice to the owner or governing board 765
of the out-of-home care entity that is the subject of the report. 766
The agency shall not provide witness statements or police or other 767
investigative reports. 768

(N) No later than three days after the day on which a public 769

children services agency that conducted the investigation as 770
determined pursuant to section 2151.422 of the Revised Code makes 771
a disposition of an investigation involving a report of alleged 772
child abuse or child neglect, or a report of an alleged threat of 773
child abuse or child neglect, that allegedly occurred in or 774
involved an out-of-home care entity, the agency shall send written 775
notice of the disposition of the investigation to the 776
administrator, director, or other chief administrative officer and 777
the owner or governing board of the out-of-home care entity. The 778
agency shall not provide witness statements or police or other 779
investigative reports. 780

Sec. 2152.821. (A) As used in this section: 781

(1) "Mentally retarded person" and "developmentally disabled 782
person" have the same meanings as in section 5123.01 of the 783
Revised Code. 784

(2) "Mentally retarded or developmentally disabled victim" 785
includes any of the following persons: 786

(a) A mentally retarded person or developmentally disabled 787
person who was a victim of a violation identified in division 788
(B)(1) of this section or an act that would be an offense of 789
violence if committed by an adult; 790

(b) A mentally retarded person or developmentally disabled 791
person against whom was directed any conduct that constitutes, or 792
that is an element of, a violation identified in division (B)(1) 793
of this section or an act that would be an offense of violence if 794
committed by an adult. 795

(B)(1) In any proceeding in juvenile court involving a 796
complaint, indictment, or information in which a child is charged 797
with a violation of section 2903.16, 2903.34, 2903.341, 2907.02, 798
2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 799

2907.322, or 2907.323 of the Revised Code or an act that would be 800
an offense of violence if committed by an adult and in which an 801
alleged victim of the violation or act was a mentally retarded 802
person or developmentally disabled person, the juvenile judge, 803
upon motion of the prosecution, shall order that the testimony of 804
the mentally retarded or developmentally disabled victim be taken 805
by deposition. The prosecution also may request that the 806
deposition be videotaped in accordance with division (B)(2) of 807
this section. The judge shall notify the mentally retarded or 808
developmentally disabled victim whose deposition is to be taken, 809
the prosecution, and the attorney for the child who is charged 810
with the violation or act of the date, time, and place for taking 811
the deposition. The notice shall identify the mentally retarded or 812
developmentally disabled victim who is to be examined and shall 813
indicate whether a request that the deposition be videotaped has 814
been made. The child who is charged with the violation or act 815
shall have the right to attend the deposition and the right to be 816
represented by counsel. Depositions shall be taken in the manner 817
provided in civil cases, except that the judge in the proceeding 818
shall preside at the taking of the deposition and shall rule at 819
that time on any objections of the prosecution or the attorney for 820
the child charged with the violation or act. The prosecution and 821
the attorney for the child charged with the violation or act shall 822
have the right, as at an adjudication hearing, to full examination 823
and cross-examination of the mentally retarded or developmentally 824
disabled victim whose deposition is to be taken. 825

If a deposition taken under this division is intended to be 826
offered as evidence in the proceeding, it shall be filed in the 827
juvenile court in which the action is pending and is admissible in 828
the manner described in division (C) of this section. If a 829
deposition of a mentally retarded or developmentally disabled 830
victim taken under this division is admitted as evidence at the 831

proceeding under division (C) of this section, the mentally 832
retarded or developmentally disabled victim shall not be required 833
to testify in person at the proceeding. 834

At any time before the conclusion of the proceeding, the 835
attorney for the child charged with the violation or act may file 836
a motion with the judge requesting that another deposition of the 837
mentally retarded or developmentally disabled victim be taken 838
because new evidence material to the defense of the child charged 839
has been discovered that the attorney for the child charged could 840
not with reasonable diligence have discovered prior to the taking 841
of the admitted deposition. Any motion requesting another 842
deposition shall be accompanied by supporting affidavits. Upon the 843
filing of the motion and affidavits, the court may order that 844
additional testimony of the mentally retarded or developmentally 845
disabled victim relative to the new evidence be taken by another 846
deposition. If the court orders the taking of another deposition 847
under this provision, the deposition shall be taken in accordance 848
with this division. If the admitted deposition was a videotaped 849
deposition taken in accordance with division (B)(2) of this 850
section, the new deposition also shall be videotaped in accordance 851
with that division. In other cases, the new deposition may be 852
videotaped in accordance with that division. 853

(2) If the prosecution requests that a deposition to be taken 854
under division (B)(1) of this section be videotaped, the juvenile 855
judge shall order that the deposition be videotaped in accordance 856
with this division. If a juvenile judge issues an order to video 857
tape the deposition, the judge shall exclude from the room in 858
which the deposition is to be taken every person except the 859
mentally retarded or developmentally disabled victim giving the 860
testimony, the judge, one or more interpreters if needed, the 861
attorneys for the prosecution and the child who is charged with 862
the violation or act, any person needed to operate the equipment 863

to be used, one person chosen by the mentally retarded or 864
developmentally disabled victim giving the deposition, and any 865
person whose presence the judge determines would contribute to the 866
welfare and well-being of the mentally retarded or developmentally 867
disabled victim giving the deposition. The person chosen by the 868
mentally retarded or developmentally disabled victim shall not be 869
a witness in the proceeding and, both before and during the 870
deposition, shall not discuss the testimony of the victim with any 871
other witness in the proceeding. To the extent feasible, any 872
person operating the recording equipment shall be restricted to a 873
room adjacent to the room in which the deposition is being taken, 874
or to a location in the room in which the deposition is being 875
taken that is behind a screen or mirror so that the person 876
operating the recording equipment can see and hear, but cannot be 877
seen or heard by, the mentally retarded or developmentally 878
disabled victim giving the deposition during the deposition. 879

The child who is charged with the violation or act shall be 880
permitted to observe and hear the testimony of the mentally 881
retarded or developmentally disabled victim giving the deposition 882
on a monitor, shall be provided with an electronic means of 883
immediate communication with the attorney of the child who is 884
charged with the violation or act during the testimony, and shall 885
be restricted to a location from which the child who is charged 886
with the violation or act cannot be seen or heard by the mentally 887
retarded or developmentally disabled victim giving the deposition, 888
except on a monitor provided for that purpose. The mentally 889
retarded or developmentally disabled victim giving the deposition 890
shall be provided with a monitor on which the mentally retarded or 891
developmentally disabled victim can observe, while giving 892
testimony, the child who is charged with the violation or act. The 893
judge, at the judge's discretion, may preside at the deposition by 894
electronic means from outside the room in which the deposition is 895

to be taken; if the judge presides by electronic means, the judge 896
shall be provided with monitors on which the judge can see each 897
person in the room in which the deposition is to be taken and with 898
an electronic means of communication with each person in that 899
room, and each person in the room shall be provided with a monitor 900
on which that person can see the judge and with an electronic 901
means of communication with the judge. A deposition that is 902
videotaped under this division shall be taken and filed in the 903
manner described in division (B)(1) of this section and is 904
admissible in the manner described in this division and division 905
(C) of this section. If a deposition that is videotaped under this 906
division is admitted as evidence at the proceeding, the mentally 907
retarded or developmentally disabled victim shall not be required 908
to testify in person at the proceeding. No deposition videotaped 909
under this division shall be admitted as evidence at any 910
proceeding unless division (C) of this section is satisfied 911
relative to the deposition and all of the following apply relative 912
to the recording: 913

(a) The recording is both aural and visual and is recorded on 914
film or videotape, or by other electronic means. 915

(b) The recording is authenticated under the Rules of 916
Evidence and the Rules of Criminal Procedure as a fair and 917
accurate representation of what occurred, and the recording is not 918
altered other than at the direction and under the supervision of 919
the judge in the proceeding. 920

(c) Each voice on the recording that is material to the 921
testimony on the recording or the making of the recording, as 922
determined by the judge, is identified. 923

(d) Both the prosecution and the child who is charged with 924
the violation or act are afforded an opportunity to view the 925
recording before it is shown in the proceeding. 926

(C)(1) At any proceeding in relation to which a deposition was taken under division (B) of this section, the deposition or a part of it is admissible in evidence upon motion of the prosecution if the testimony in the deposition or the part to be admitted is not excluded by the hearsay rule and if the deposition or the part to be admitted otherwise is admissible under the Rules of Evidence. For purposes of this division, testimony is not excluded by the hearsay rule if the testimony is not hearsay under Evidence Rule 801; the testimony is within an exception to the hearsay rule set forth in Evidence Rule 803; the mentally retarded or developmentally disabled victim who gave the testimony is unavailable as a witness, as defined in Evidence Rule 804, and the testimony is admissible under that rule; or both of the following apply: 927
928
929
930
931
932
933
934
935
936
937
938
939
940

(a) The child who is charged with the violation or act had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination. 941
942
943
944

(b) The judge determines that there is reasonable cause to believe that, if the mentally retarded or developmentally disabled victim who gave the testimony in the deposition were to testify in person at the proceeding, the mentally retarded or developmentally disabled victim would experience serious emotional trauma as a result of the mentally retarded or developmentally disabled victim's participation at the proceeding. 945
946
947
948
949
950
951

(2) Objections to receiving in evidence a deposition or a part of it under division (C) of this section shall be made as provided in civil actions. 952
953
954

(3) The provisions of divisions (B) and (C) of this section are in addition to any other provisions of the Revised Code, the Rules of Juvenile Procedure, the Rules of Criminal Procedure, or 955
956
957

the Rules of Evidence that pertain to the taking or admission of depositions in a juvenile court proceeding and do not limit the admissibility under any of those other provisions of any deposition taken under division (B) of this section or otherwise taken.

958
959
960
961
962

(D) In any proceeding in juvenile court involving a complaint, indictment, or information in which a child is charged with a violation listed in division (B)(1) of this section or an act that would be an offense of violence if committed by an adult and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled person, the prosecution may file a motion with the juvenile judge requesting the judge to order the testimony of the mentally retarded or developmentally disabled victim to be taken in a room other than the room in which the proceeding is being conducted and be televised, by closed circuit equipment, into the room in which the proceeding is being conducted to be viewed by the child who is charged with the violation or act and any other persons who are not permitted in the room in which the testimony is to be taken but who would have been present during the testimony of the mentally retarded or developmentally disabled victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The juvenile judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the mentally retarded or developmentally disabled victim is unavailable to testify in the room in which the proceeding is being conducted in the physical presence of the child charged with the violation or act for one or more of the reasons set forth in division (F) of this section. If a juvenile judge issues an order of that nature, the judge shall exclude from

963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989

the room in which the testimony is to be taken every person except 990
a person described in division (B)(2) of this section. The judge, 991
at the judge's discretion, may preside during the giving of the 992
testimony by electronic means from outside the room in which it is 993
being given, subject to the limitations set forth in division 994
(B)(2) of this section. To the extent feasible, any person 995
operating the televising equipment shall be hidden from the sight 996
and hearing of the mentally retarded or developmentally disabled 997
victim giving the testimony, in a manner similar to that described 998
in division (B)(2) of this section. The child who is charged with 999
the violation or act shall be permitted to observe and hear the 1000
testimony of the mentally retarded or developmentally disabled 1001
victim giving the testimony on a monitor, shall be provided with 1002
an electronic means of immediate communication with the attorney 1003
of the child who is charged with the violation or act during the 1004
testimony, and shall be restricted to a location from which the 1005
child who is charged with the violation or act cannot be seen or 1006
heard by the mentally retarded or developmentally disabled victim 1007
giving the testimony, except on a monitor provided for that 1008
purpose. The mentally retarded or developmentally disabled victim 1009
giving the testimony shall be provided with a monitor on which the 1010
mentally retarded or developmentally disabled victim can observe, 1011
while giving testimony, the child who is charged with the 1012
violation or act. 1013

(E) In any proceeding in juvenile court involving a 1014
complaint, indictment, or information in which a child is charged 1015
with a violation listed in division (B)(1) of this section or an 1016
act that would be an offense of violence if committed by an adult 1017
and in which an alleged victim of the violation or offense was a 1018
mentally retarded or developmentally disabled person, the 1019
prosecution may file a motion with the juvenile judge requesting 1020
the judge to order the testimony of the mentally retarded or 1021

developmentally disabled victim to be taken outside of the room in 1022
which the proceeding is being conducted and be recorded for 1023
showing in the room in which the proceeding is being conducted 1024
before the judge, the child who is charged with the violation or 1025
act, and any other persons who would have been present during the 1026
testimony of the mentally retarded or developmentally disabled 1027
victim had it been given in the room in which the proceeding is 1028
being conducted. Except for good cause shown, the prosecution 1029
shall file a motion under this division at least seven days before 1030
the date of the proceeding. The juvenile judge may issue the order 1031
upon the motion of the prosecution filed under this division, if 1032
the judge determines that the mentally retarded or developmentally 1033
disabled victim is unavailable to testify in the room in which the 1034
proceeding is being conducted in the physical presence of the 1035
child charged with the violation or act, due to one or more of the 1036
reasons set forth in division (F) of this section. If a juvenile 1037
judge issues an order of that nature, the judge shall exclude from 1038
the room in which the testimony is to be taken every person except 1039
a person described in division (B)(2) of this section. To the 1040
extent feasible, any person operating the recording equipment 1041
shall be hidden from the sight and hearing of the mentally 1042
retarded or developmentally disabled victim giving the testimony, 1043
in a manner similar to that described in division (B)(2) of this 1044
section. The child who is charged with the violation or act shall 1045
be permitted to observe and hear the testimony of the mentally 1046
retarded or developmentally disabled victim giving the testimony 1047
on a monitor, shall be provided with an electronic means of 1048
immediate communication with the attorney of the child who is 1049
charged with the violation or act during the testimony, and shall 1050
be restricted to a location from which the child who is charged 1051
with the violation or act cannot be seen or heard by the mentally 1052
retarded or developmentally disabled victim giving the testimony, 1053
except on a monitor provided for that purpose. The mentally 1054

retarded or developmentally disabled victim giving the testimony 1055
shall be provided with a monitor on which the mentally retarded or 1056
developmentally disabled victim can observe, while giving 1057
testimony, the child who is charged with the violation or act. No 1058
order for the taking of testimony by recording shall be issued 1059
under this division unless the provisions set forth in divisions 1060
(B)(2)(a), (b), (c), and (d) of this section apply to the 1061
recording of the testimony. 1062

(F) For purposes of divisions (D) and (E) of this section, a 1063
juvenile judge may order the testimony of a mentally retarded or 1064
developmentally disabled victim to be taken outside of the room in 1065
which a proceeding is being conducted if the judge determines that 1066
the mentally retarded or developmentally disabled victim is 1067
unavailable to testify in the room in the physical presence of the 1068
child charged with the violation or act due to one or more of the 1069
following circumstances: 1070

(1) The persistent refusal of the mentally retarded or 1071
developmentally disabled victim to testify despite judicial 1072
requests to do so; 1073

(2) The inability of the mentally retarded or developmentally 1074
disabled victim to communicate about the alleged violation or 1075
offense because of extreme fear, failure of memory, or another 1076
similar reason; 1077

(3) The substantial likelihood that the mentally retarded or 1078
developmentally disabled victim will suffer serious emotional 1079
trauma from so testifying. 1080

(G)(1) If a juvenile judge issues an order pursuant to 1081
division (D) or (E) of this section that requires the testimony of 1082
a mentally retarded or developmentally disabled victim in a 1083
juvenile court proceeding to be taken outside of the room in which 1084
the proceeding is being conducted, the order shall specifically 1085

identify the mentally retarded or developmentally disabled victim 1086
to whose testimony it applies, the order applies only during the 1087
testimony of the specified mentally retarded or developmentally 1088
disabled victim, and the mentally retarded or developmentally 1089
disabled victim giving the testimony shall not be required to 1090
testify at the proceeding other than in accordance with the order. 1091
The authority of a judge to close the taking of a deposition under 1092
division (B)(2) of this section or a proceeding under division (D) 1093
or (E) of this section is in addition to the authority of a judge 1094
to close a hearing pursuant to section 2151.35 of the Revised 1095
Code. 1096

(2) A juvenile judge who makes any determination regarding 1097
the admissibility of a deposition under divisions (B) and (C) of 1098
this section, the videotaping of a deposition under division 1099
(B)(2) of this section, or the taking of testimony outside of the 1100
room in which a proceeding is being conducted under division (D) 1101
or (E) of this section shall enter the determination and findings 1102
on the record in the proceeding. 1103

Sec. 2311.14. (A)(1) Whenever because of a hearing, speech, 1104
or other impairment a party to or witness in a legal proceeding 1105
cannot readily understand or communicate, the court shall appoint 1106
a qualified interpreter to assist such person. Before appointing 1107
any interpreter under this division for a party or witness who is 1108
a mentally retarded person or developmentally disabled person, the 1109
court shall evaluate the qualifications of the interpreter and 1110
shall make a determination as to the ability of the interpreter to 1111
effectively interpret on behalf of the party or witness that the 1112
interpreter will assist, and the court may appoint the interpreter 1113
only if the court is satisfied that the interpreter is able to 1114
effectively interpret on behalf of that party or witness. 1115

(2) This section is not limited to a person who speaks a 1116

language other than English. It also applies to the language and 1117
descriptions of any mentally retarded person or developmentally 1118
disabled person who cannot be reasonably understood, or who cannot 1119
understand questioning, without the aid of an interpreter. The 1120
interpreter may aid the parties in formulating methods of 1121
questioning the person with mental retardation or a developmental 1122
disability and in interpreting the answers of the person. 1123

(B) Before entering upon ~~his~~ official duties, the interpreter 1124
shall take an oath that ~~he~~ the interpreter will make a true 1125
interpretation of the proceedings to the party or witness, and 1126
that ~~he~~ the interpreter will truly repeat the statements made by 1127
such party or witness to the court, to the best of ~~his~~ the 1128
interpreter's ability. If the interpreter is appointed to assist a 1129
mentally retarded person or developmentally disabled person as 1130
described in division (A)(2) of this section, the oath also shall 1131
include an oath that the interpreter will not prompt, lead, 1132
suggest, or otherwise improperly influence the testimony of the 1133
witness or party. 1134

(C) The court shall determine a reasonable fee for all such 1135
interpreter service which shall be paid out of the same funds as 1136
witness fees. 1137

(D) As used in this section, "mentally retarded person" and 1138
"developmentally disabled person" have the same meanings as in 1139
section 5123.01 of the Revised Code. 1140

Sec. 2903.341. (A) As used in this section: 1141

(1) "MR/DD caretaker" means any MR/DD employee or any person 1142
who assumes the duty to provide for the care and protection of a 1143
mentally retarded person or a developmentally disabled person on a 1144
voluntary basis, by contract, through receipt of payment for care 1145
and protection, as a result of a family relationship, or by order 1146

of a court of competent jurisdiction. "MR/DD caretaker" includes a 1147
person who is an employee of a care facility and a person who is 1148
an employee of an entity under contract with a provider. "MR/DD 1149
caretaker" does not include a person who owns, operates, or 1150
administers a care facility or who is an agent of a care facility 1151
unless that person also personally provides care to persons with 1152
mental retardation or a developmental disability. 1153

(2) "Mentally retarded person" and "developmentally disabled 1154
person" have the same meanings as in section 5123.01 of the 1155
Revised Code. 1156

(3) "MR/DD employee" has the same meaning as in section 1157
5123.50 of the Revised Code. 1158

(B) No MR/DD caretaker shall create a substantial risk to the 1159
health or safety of a mentally retarded person or a 1160
developmentally disabled person. An MR/DD caretaker does not 1161
create a substantial risk to the health or safety of a mentally 1162
retarded person or a developmentally disabled person under this 1163
division when the MR/DD caretaker treats a physical or mental 1164
illness or defect of the mentally retarded person or 1165
developmentally disabled person by spiritual means through prayer 1166
alone, in accordance with the tenets of a recognized religious 1167
body. 1168

(C) No person who owns, operates, or administers a care 1169
facility or who is an agent of a care facility shall condone, or 1170
knowingly permit, any conduct by an MR/DD caretaker who is 1171
employed by or under the control of the owner, operator, 1172
administrator, or agent that is in violation of division (B) of 1173
this section and that involves a mentally retarded person or a 1174
developmentally disabled person who is under the care of the 1175
owner, operator, administrator, or agent. A person who relies upon 1176
treatment by spiritual means through prayer alone, in accordance 1177
with the tenets of a recognized religious denomination, shall not 1178

be considered endangered under this division for that reason 1179
alone. 1180

(D)(1) It is an affirmative defense to a charge of a 1181
violation of division (B) or (C) of this section that the actor's 1182
conduct was committed in good faith solely because the actor was 1183
ordered to commit the conduct by a person to whom one of the 1184
following applies: 1185

(a) The person has supervisory authority over the actor. 1186

(b) The person has authority over the actor's conduct 1187
pursuant to a contract for the provision of services. 1188

(2) It is an affirmative defense to a charge of a violation 1189
of division (C) of this section that the person who owns, 1190
operates, or administers a care facility or who is an agent of a 1191
care facility and who is charged with the violation is following 1192
the individual service plan for the involved mentally retarded 1193
person or a developmentally disabled person or that the admission, 1194
discharge, and transfer rule set forth in the Administrative Code 1195
is being followed. 1196

(3) It is an affirmative defense to a charge of a violation 1197
of division (C) of this section that the actor did not have 1198
readily available a means to prevent either the harm to the person 1199
with mental retardation or a developmental disability or the death 1200
of such a person and the actor took reasonable steps to summon 1201
aid. 1202

(E)(1) Except as provided in division (E)(2) or (E)(3) of 1203
this section, whoever violates division (B) or (C) of this section 1204
is guilty of patient endangerment, a misdemeanor of the first 1205
degree. 1206

(2) If the offender previously has been convicted of, or 1207
pleaded guilty to, a violation of this section, patient 1208

endangerment is a felony of the fourth degree. 1209

(3) If the violation results in serious physical harm to the 1210
person with mental retardation or a developmental disability, 1211
patient endangerment is a felony of the third degree. 1212

Sec. 2930.03. (A) A person or entity required or authorized 1213
under this chapter to give notice to a victim shall give the 1214
notice to the victim by any means reasonably calculated to provide 1215
prompt actual notice. Except when a provision requires that notice 1216
is to be given in a specific manner, a notice may be oral or 1217
written. 1218

(B) Except for receipt of the initial information and notice 1219
required to be given to a victim under divisions (A) and (B) of 1220
section 2930.04, section 2930.05, and divisions (A) and (B) of 1221
section 2930.06 of the Revised Code, a victim who wishes to 1222
receive any notice authorized by this chapter shall make a request 1223
for the notice to the prosecutor or the custodial agency that is 1224
to provide the notice, as specified in this chapter. If the victim 1225
does not make a request as described in this division, the 1226
prosecutor or custodial agency is not required to provide any 1227
notice described in this chapter other than the initial 1228
information and notice required to be given to a victim under 1229
divisions (A) and (B) of section 2930.04, section 2930.05, and 1230
divisions (A) and (B) of section 2930.06 of the Revised Code. 1231

(C) A person or agency that is required to furnish notice 1232
under this chapter shall give the notice to the victim at the 1233
address or telephone number provided to the person or agency by 1234
the victim. A victim who requests to receive notice under this 1235
chapter as described in division (B) of this section shall inform 1236
the person or agency of the name, address, or telephone number of 1237
the victim and of any change to that information. 1238

(D) A person or agency that has furnished information to a 1239
victim in accordance with any requirement or authorization under 1240
this chapter shall notify the victim promptly of any significant 1241
changes to that information. 1242

(E) Divisions (A) to (D) of this section do not apply 1243
regarding a notice that a prosecutor is required to provide under 1244
section 2930.061 of the Revised Code. A prosecutor required to 1245
provide notice under that section shall provide the notice as 1246
specified in that section. 1247

Sec. 2930.061. (A) If a person is charged in a complaint, 1248
indictment, or information with any crime or specified delinquent 1249
act or with any other violation of law, and if the case involves a 1250
victim that the prosecutor in the case knows is a mentally 1251
retarded person or a developmentally disabled person, in addition 1252
to any other notices required under this chapter or under any 1253
other provision of law, the prosecutor in the case shall send 1254
written notice of the charges to the department of mental 1255
retardation and developmental disabilities. The written notice 1256
shall specifically identify the person so charged. 1257

(B) As used in this section, "mentally retarded person" and 1258
"developmentally disabled person" have the same meanings as in 1259
section 5123.01 of the Revised Code. 1260

Sec. 2945.482. (A) As used in this section: 1261

(1) "Mentally retarded person" and "developmentally disabled 1262
person" have the same meanings as in section 5123.01 of the 1263
Revised Code. 1264

(2) "Mentally retarded or developmentally disabled victim" 1265
includes a mentally retarded or developmentally disabled person 1266
who was a victim of a violation identified in division (B)(1) of 1267
this section or an offense of violence or against whom was 1268

directed any conduct that constitutes, or that is an element of, a 1269
violation identified in division (B)(1) of this section or an 1270
offense of violence. 1271

(B)(1) In any proceeding in the prosecution of a charge of a 1272
violation of section 2903.16, 2903.34, 2903.341, 2905.03, 2907.02, 1273
2907.03, 2907.05, 2907.06, 2907.09, 2907.21, 2907.23, 2907.24, 1274
2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an 1275
offense of violence and in which an alleged victim of the 1276
violation or offense was a mentally retarded or developmentally 1277
disabled person, the judge of the court in which the prosecution 1278
is being conducted, upon motion of an attorney for the 1279
prosecution, shall order that the testimony of the mentally 1280
retarded or developmentally disabled victim be taken by 1281
deposition. The prosecution also may request that the deposition 1282
be videotaped in accordance with division (B)(2) of this section. 1283
The judge shall notify the mentally retarded or developmentally 1284
disabled victim whose deposition is to be taken, the prosecution, 1285
and the defense of the date, time, and place for taking the 1286
deposition. The notice shall identify the mentally retarded or 1287
developmentally disabled victim who is to be examined and shall 1288
indicate whether a request that the deposition be videotaped has 1289
been made. The defendant shall have the right to attend the 1290
deposition and the right to be represented by counsel. Depositions 1291
shall be taken in the manner provided in civil cases, except that 1292
the judge shall preside at the taking of the deposition and shall 1293
rule at the time on any objections of the prosecution or the 1294
attorney for the defense. The prosecution and the attorney for the 1295
defense shall have the right, as at trial, to full examination and 1296
cross-examination of the mentally retarded or developmentally 1297
disabled victim whose deposition is to be taken. If a deposition 1298
taken under this division is intended to be offered as evidence in 1299
the proceeding, it shall be filed in the court in which the action 1300

is pending and is admissible in the manner described in division 1301
(C) of this section. 1302

If a deposition of a mentally retarded or developmentally 1303
disabled victim taken under this division is admitted as evidence 1304
at the proceeding under division (C) of this section, the mentally 1305
retarded or developmentally disabled victim shall not be required 1306
to testify in person at the proceeding. 1307

At any time before the conclusion of the proceeding, the 1308
attorney for the defense may file a motion with the judge 1309
requesting that another deposition of the mentally retarded or 1310
developmentally disabled victim be taken because new evidence 1311
material to the defense has been discovered that the attorney for 1312
the defense could not with reasonable diligence have discovered 1313
prior to the taking of the admitted deposition. If the court 1314
orders the taking of another deposition under this provision, the 1315
deposition shall be taken in accordance with this division. If the 1316
admitted deposition was a videotaped deposition taken in 1317
accordance with division (B)(2) of this section, the new 1318
deposition shall be videotaped in accordance with that division. 1319
In other cases, the new deposition may be videotaped in accordance 1320
with that division. 1321

(2) If the prosecution requests that a deposition to be taken 1322
under division (B)(2) of this section be videotaped, the judge 1323
shall order that the deposition be videotaped in accordance with 1324
this division. If a judge issues an order that the deposition be 1325
videotaped, the judge shall exclude from the room in which the 1326
deposition is to be taken every person except the mentally 1327
retarded or developmentally disabled victim giving the testimony, 1328
the judge, one or more interpreters if needed, the attorneys for 1329
the prosecution and the defense, any person needed to operate the 1330
equipment to be used, one person chosen by the mentally retarded 1331
or developmentally disabled victim giving the deposition, and any 1332

person whose presence the judge determines would contribute to the 1333
welfare and well-being of the mentally retarded or developmentally 1334
disabled victim giving the deposition. The person chosen by the 1335
mentally retarded or developmentally disabled victim shall not be 1336
a witness in the proceeding and, both before and during the 1337
deposition, shall not discuss the testimony of the mentally 1338
retarded or developmentally disabled victim with any other witness 1339
in the proceeding. To the extent feasible, any person operating 1340
the recording equipment shall be restricted to a room adjacent to 1341
the room in which the deposition is being taken, or to a location 1342
in the room in which the deposition is being taken that is behind 1343
a screen or mirror, so that the person operating the recording 1344
equipment can see and hear, but cannot be seen or heard by, the 1345
mentally retarded or developmentally disabled victim giving the 1346
deposition during the deposition. 1347

The defendant shall be permitted to observe and hear the 1348
testimony of the mentally retarded or developmentally disabled 1349
victim giving the deposition on a monitor, shall be provided with 1350
an electronic means of immediate communication with the 1351
defendant's attorney during the testimony, and shall be restricted 1352
to a location from which the defendant cannot be seen or heard by 1353
the mentally retarded or developmentally disabled victim giving 1354
the deposition, except on a monitor provided for that purpose. The 1355
mentally retarded or developmentally disabled victim giving the 1356
deposition shall be provided with a monitor on which the victim 1357
can observe, during the testimony, the defendant. The judge, at 1358
the judge's discretion, may preside at the deposition by 1359
electronic means from outside the room in which the deposition is 1360
to be taken. If the judge presides by electronic means, the judge 1361
shall be provided with monitors on which the judge can see each 1362
person in the room in which the deposition is to be taken and with 1363
an electronic means of communication with each person, and each 1364

person in the room shall be provided with a monitor on which that 1365
person can see the judge and with an electronic means of 1366
communication with the judge. A deposition that is videotaped 1367
under this division shall be taken and filed in the manner 1368
described in division (B)(1) of this section and is admissible in 1369
the manner described in this division and division (C) of this 1370
section, and, if a deposition that is videotaped under this 1371
division is admitted as evidence at the proceeding, the mentally 1372
retarded or developmentally disabled victim shall not be required 1373
to testify in person at the proceeding. No deposition videotaped 1374
under this division shall be admitted as evidence at any 1375
proceeding unless division (C) of this section is satisfied 1376
relative to the deposition and all of the following apply relative 1377
to the recording: 1378

(a) The recording is both aural and visual and is recorded on 1379
film or videotape, or by other electronic means. 1380

(b) The recording is authenticated under the Rules of 1381
Evidence and the Rules of Criminal Procedure as a fair and 1382
accurate representation of what occurred, and the recording is not 1383
altered other than at the direction and under the supervision of 1384
the judge in the proceeding. 1385

(c) Each voice on the recording that is material to the 1386
testimony on the recording or the making of the recording, as 1387
determined by the judge, is identified. 1388

(d) Both the prosecution and the defendant are afforded an 1389
opportunity to view the recording before it is shown in the 1390
proceeding. 1391

(C)(1) At any proceeding in a prosecution in relation to 1392
which a deposition was taken under division (B) of this section, 1393
the deposition or a part of it is admissible in evidence upon 1394
motion of the prosecution if the testimony in the deposition or 1395

the part to be admitted is not excluded by the hearsay rule and if 1396
the deposition or the part to be admitted otherwise is admissible 1397
under the Rules of Evidence. For purposes of this division, 1398
testimony is not excluded by the hearsay rule if the testimony is 1399
not hearsay under Evidence Rule 801; the testimony is within an 1400
exception to the hearsay rule set forth in Evidence Rule 803; the 1401
mentally retarded or developmentally disabled victim who gave the 1402
testimony is unavailable as a witness, as defined in Evidence Rule 1403
804, and the testimony is admissible under that rule; or both of 1404
the following apply: 1405

(a) The defendant had an opportunity and similar motive at 1406
the time of the taking of the deposition to develop the testimony 1407
by direct, cross, or redirect examination. 1408

(b) The judge determines that there is reasonable cause to 1409
believe that, if the mentally retarded or developmentally disabled 1410
victim who gave the testimony in the deposition were to testify in 1411
person at the proceeding, the mentally retarded or developmentally 1412
disabled victim would experience serious emotional trauma as a 1413
result of the mentally retarded or developmentally disabled 1414
victim's participation at the proceeding. 1415

(2) Objections to receiving in evidence a deposition or a 1416
part of it under division (C) of this section shall be made as 1417
provided in civil actions. 1418

(3) The provisions of divisions (B) and (C) of this section 1419
are in addition to any other provisions of the Revised Code, the 1420
Rules of Criminal Procedure, or the Rules of Evidence that pertain 1421
to the taking or admission of depositions in a criminal proceeding 1422
and do not limit the admissibility under any of those other 1423
provisions of any deposition taken under division (B) of this 1424
section or otherwise taken. 1425

(D) In any proceeding in the prosecution of any charge of a 1426

violation listed in division (B)(1) of this section or an offense 1427
of violence and in which an alleged victim of the violation or 1428
offense was a mentally retarded or developmentally disabled 1429
person, the prosecution may file a motion with the judge 1430
requesting the judge to order the testimony of the mentally 1431
retarded or developmentally disabled victim to be taken in a room 1432
other than the room in which the proceeding is being conducted and 1433
be televised, by closed circuit equipment, into the room in which 1434
the proceeding is being conducted to be viewed by the jury, if 1435
applicable, the defendant, and any other persons who are not 1436
permitted in the room in which the testimony is to be taken but 1437
who would have been present during the testimony of the mentally 1438
retarded or developmentally disabled victim had it been given in 1439
the room in which the proceeding is being conducted. Except for 1440
good cause shown, the prosecution shall file a motion under this 1441
division at least seven days before the date of the proceeding. 1442
The judge may issue the order upon the motion of the prosecution 1443
filed under this section, if the judge determines that the 1444
mentally retarded or developmentally disabled victim is 1445
unavailable to testify in the room in which the proceeding is 1446
being conducted in the physical presence of the defendant for one 1447
or more of the reasons set forth in division (F) of this section. 1448
If a judge issues an order of that nature, the judge shall exclude 1449
from the room in which the testimony is to be taken every person 1450
except a person described in division (B)(2) of this section. The 1451
judge, at the judge's discretion, may preside during the giving of 1452
the testimony by electronic means from outside the room in which 1453
it is being given, subject to the limitations set forth in 1454
division (B)(2) of this section. To the extent feasible, any 1455
person operating the televising equipment shall be hidden from the 1456
sight and hearing of the mentally retarded or developmentally 1457
disabled victim giving the testimony, in a manner similar to that 1458
described in division (B)(2) of this section. The defendant shall 1459

be permitted to observe and hear the testimony of the mentally retarded or developmentally disabled victim giving the testimony on a monitor, shall be provided with an electronic means of immediate communication with the defendant's attorney during the testimony, and shall be restricted to a location from which the defendant cannot be seen or heard by the mentally retarded or developmentally disabled victim giving the testimony, except on a monitor provided for that purpose. The mentally retarded or developmentally disabled victim giving the testimony shall be provided with a monitor on which the mentally retarded or developmentally disabled victim can observe, during the testimony, the defendant.

(E) In any proceeding in the prosecution of any charge of a violation listed in division (B)(1) of this section or an offense of violence and in which an alleged victim of the violation or offense was a mentally retarded or developmentally disabled victim, the prosecution may file a motion with the judge requesting the judge to order the testimony of the mentally retarded or developmentally disabled victim to be taken outside of the room in which the proceeding is being conducted and be recorded for showing in the room in which the proceeding is being conducted before the judge, the jury, if applicable, the defendant, and any other persons who would have been present during the testimony of the mentally retarded or developmentally disabled victim had it been given in the room in which the proceeding is being conducted. Except for good cause shown, the prosecution shall file a motion under this division at least seven days before the date of the proceeding. The judge may issue the order upon the motion of the prosecution filed under this division, if the judge determines that the mentally retarded or developmentally disabled victim is unavailable to testify in the room in which the proceeding is being conducted in the physical

presence of the defendant, for one or more of the reasons set 1492
forth in division (F) of this section. If a judge issues an order 1493
of that nature, the judge shall exclude from the room in which the 1494
testimony is to be taken every person except a person described in 1495
division (B)(2) of this section. To the extent feasible, any 1496
person operating the recording equipment shall be hidden from the 1497
sight and hearing of the mentally retarded or developmentally 1498
disabled victim giving the testimony, in a manner similar to that 1499
described in division (B)(2) of this section. The defendant shall 1500
be permitted to observe and hear the testimony of the mentally 1501
retarded or developmentally disabled victim who is giving the 1502
testimony on a monitor, shall be provided with an electronic means 1503
of immediate communication with the defendant's attorney during 1504
the testimony, and shall be restricted to a location from which 1505
the defendant cannot be seen or heard by the mentally retarded or 1506
developmentally disabled victim giving the testimony, except on a 1507
monitor provided for that purpose. The mentally retarded or 1508
developmentally disabled victim giving the testimony shall be 1509
provided with a monitor on which the victim can observe, during 1510
the testimony, the defendant. No order for the taking of testimony 1511
by recording shall be issued under this division unless the 1512
provisions set forth in divisions (B)(2)(a), (b), (c), and (d) of 1513
this section apply to the recording of the testimony. 1514

(F) For purposes of divisions (D) and (E) of this section, a 1515
judge may order the testimony of a mentally retarded or 1516
developmentally disabled victim to be taken outside the room in 1517
which the proceeding is being conducted if the judge determines 1518
that the mentally retarded or developmentally disabled victim is 1519
unavailable to testify in the room in the physical presence of the 1520
defendant due to one or more of the following: 1521

(1) The persistent refusal of the mentally retarded or 1522
developmentally disabled victim to testify despite judicial 1523

requests to do so; 1524

(2) The inability of the mentally retarded or developmentally disabled victim to communicate about the alleged violation or offense because of extreme fear, failure of memory, or another similar reason; 1525
1526
1527
1528

(3) The substantial likelihood that the mentally retarded or developmentally disabled victim will suffer serious emotional trauma from so testifying. 1529
1530
1531

(G)(1) If a judge issues an order pursuant to division (D) or (E) of this section that requires the testimony of a mentally retarded or developmentally disabled victim in a criminal proceeding to be taken outside of the room in which the proceeding is being conducted, the order shall specifically identify the mentally retarded or developmentally disabled victim to whose testimony it applies, the order applies only during the testimony of the specified mentally retarded or developmentally disabled victim, and the mentally retarded or developmentally disabled victim giving the testimony shall not be required to testify at the proceeding other than in accordance with the order. 1532
1533
1534
1535
1536
1537
1538
1539
1540
1541
1542

(2) A judge who makes any determination regarding the admissibility of a deposition under divisions (B) and (C) of this section, the videotaping of a deposition under division (B)(2) of this section, or the taking of testimony outside of the room in which a proceeding is being conducted under division (D) or (E) of this section shall enter the determination and findings on the record in the proceeding. 1543
1544
1545
1546
1547
1548
1549

Sec. 2945.491. (A) As used in this section: 1550

(1) "Mentally retarded person" and "developmentally disabled person" have the same meanings as in section 5123.01 of the Revised Code. 1551
1552
1553

(2) "Mentally retarded or developmentally disabled victim" 1554
includes a mentally retarded or developmentally disabled person 1555
who was a victim of a felony violation identified in division 1556
(B)(1) of this section or a felony offense of violence or against 1557
whom was directed any conduct that constitutes, or that is an 1558
element of, a felony violation identified in division (B)(1) of 1559
this section or a felony offense of violence. 1560

(B)(1) At a trial on a charge of a felony violation of 1561
section 2903.16, 2903.34, 2903.341, 2907.02, 2907.03, 2907.05, 1562
2907.21, 2907.23, 2907.24, 2907.32, 2907.321, 2907.322, or 1563
2907.323 of the Revised Code or an offense of violence and in 1564
which an alleged victim of the violation or offense was a mentally 1565
retarded or developmentally disabled person, the court, upon 1566
motion of the prosecutor in the case, may admit videotaped 1567
preliminary hearing testimony of the mentally retarded or 1568
developmentally disabled victim as evidence at the trial, in lieu 1569
of the mentally retarded or developmentally disabled victim 1570
appearing as a witness and testifying at trial, if all of the 1571
following apply: 1572

(a) The videotape of the testimony was made at the 1573
preliminary hearing at which probable cause of the violation 1574
charged was found. 1575

(b) The videotape of the testimony was made in accordance 1576
with division (C) of section 2937.11 of the Revised Code. 1577

(c) The testimony in the videotape is not excluded by the 1578
hearsay rule and otherwise is admissible under the Rules of 1579
Evidence. For purposes of this division, testimony is not excluded 1580
by the hearsay rule if the testimony is not hearsay under Evidence 1581
Rule 801, the testimony is within an exception to the hearsay rule 1582
set forth in Evidence Rule 803, the mentally retarded or 1583
developmentally disabled victim who gave the testimony is 1584

unavailable as a witness, as defined in Evidence Rule 804, and the 1585
testimony is admissible under that rule, or both of the following 1586
apply: 1587

(i) The accused had an opportunity and similar motive at the 1588
preliminary hearing to develop the testimony of the mentally 1589
retarded or developmentally disabled victim by direct, cross, or 1590
redirect examination. 1591

(ii) The court determines that there is reasonable cause to 1592
believe that if the mentally retarded or developmentally disabled 1593
victim who gave the testimony at the preliminary hearing were to 1594
testify in person at the trial, the mentally retarded or 1595
developmentally disabled victim would experience serious emotional 1596
trauma as a result of the victim's participation at the trial. 1597

(2) If a mentally retarded or developmentally disabled victim 1598
of an alleged felony violation of section 2903.16, 2903.34, 1599
2903.341, 2907.02, 2907.03, 2907.05, 2907.21, 2907.23, 2907.24, 1600
2907.32, 2907.321, 2907.322, or 2907.323 of the Revised Code or an 1601
alleged felony offense of violence testifies at the preliminary 1602
hearing in the case, if the testimony of the mentally retarded or 1603
developmentally disabled victim at the preliminary hearing was 1604
videotaped pursuant to division (C) of section 2937.11 of the 1605
Revised Code, and if the defendant in the case files a written 1606
objection to the use, pursuant to division (B)(1) of this section, 1607
of the videotaped testimony at the trial, the court, immediately 1608
after the filing of the objection, shall hold a hearing to 1609
determine whether the videotaped testimony of the mentally 1610
retarded or developmentally disabled victim should be admissible 1611
at trial under division (B)(1) of this section and, if it is 1612
admissible, whether the mentally retarded or developmentally 1613
disabled victim should be required to provide limited additional 1614
testimony of the type described in this division. At the hearing 1615
held pursuant to this division, the defendant and the prosecutor 1616

in the case may present any evidence that is relevant to the 1617
issues to be determined at the hearing, but the mentally retarded 1618
or developmentally disabled victim shall not be required to 1619
testify at the hearing. 1620

After the hearing, the court shall not require the mentally 1621
retarded or developmentally disabled victim to testify at the 1622
trial, unless it determines that both of the following apply: 1623

(a) That the testimony of the mentally retarded or 1624
developmentally disabled victim at trial is necessary for one or 1625
more of the following reasons: 1626

(i) Evidence that was not available at the time of the 1627
testimony of the mentally retarded or developmentally disabled 1628
victim at the preliminary hearing has been discovered. 1629

(ii) The circumstances surrounding the case have changed 1630
sufficiently to necessitate that the mentally retarded or 1631
developmentally disabled victim testify at the trial. 1632

(b) That the testimony of the mentally retarded or 1633
developmentally disabled victim at the trial is necessary to 1634
protect the right of the defendant to a fair trial. 1635

The court shall enter its finding and the reasons for it in 1636
the journal. If the court requires the mentally retarded or 1637
developmentally disabled victim to testify at the trial, the 1638
testimony of the victim shall be limited to the new evidence and 1639
changed circumstances, and the mentally retarded or 1640
developmentally disabled victim shall not otherwise be required to 1641
testify at the trial. The required testimony of the mentally 1642
retarded or developmentally disabled victim may be given in person 1643
or, upon motion of the prosecution, may be taken by deposition in 1644
accordance with division (B) of section 2945.482 of the Revised 1645
Code provided the deposition is admitted as evidence under 1646
division (C) of that section, may be taken outside of the 1647

courtroom and televised into the courtroom in accordance with 1648
division (D) of that section, or may be taken outside of the 1649
courtroom and recorded for showing in the courtroom in accordance 1650
with division (E) of that section. 1651

(3) If videotaped testimony of a mentally retarded or 1652
developmentally disabled victim is admitted at trial in accordance 1653
with division (B)(1) of this section, the mentally retarded or 1654
developmentally disabled victim shall not be compelled in any way 1655
to appear as a witness at the trial, except as provided in 1656
division (B)(2) of this section. 1657

(C) An order issued pursuant to division (B) of this section 1658
shall specifically identify the mentally retarded or 1659
developmentally disabled victim concerning whose testimony it 1660
pertains. The order shall apply only during the testimony of the 1661
mentally retarded or developmentally disabled victim it 1662
specifically identifies. 1663

Sec. 5120.173. Any person who is required to report suspected 1664
abuse or neglect of a child under eighteen years of age pursuant 1665
to division (A) of section 2151.421 of the Revised Code, ~~and~~ any 1666
person who is permitted to report or cause a report to be made of 1667
suspected abuse or neglect of a child under eighteen years of age 1668
pursuant to division (B) of that section, any person who is 1669
required to report suspected abuse or neglect of a person with 1670
mental retardation or a developmental disability pursuant to 1671
division (C) of section 5123.61 of the Revised Code, and any 1672
person who is permitted to report suspected abuse or neglect of a 1673
person with mental retardation or a developmental disability 1674
pursuant to division (F) of that section and who makes or causes 1675
the report to be made, shall direct that report to the state 1676
highway patrol if the child or the person with mental retardation 1677
or a developmental disability is an inmate in the custody of a 1678

state correctional institution. If the state highway patrol 1679
determines after receipt of the report that it is probable that 1680
abuse or neglect of the inmate occurred, the patrol shall report 1681
its findings to the department of rehabilitation and correction, 1682
to the court that sentenced the inmate for the offense for which 1683
the inmate is in the custody of the department, and to the 1684
chairman and vice-chairman of the correctional institution 1685
inspection committee established by section 103.71 of the Revised 1686
Code. 1687

Sec. 5123.032. (A) As used in this section, "developmental 1688
center" means any institution or facility of the department of 1689
mental retardation and developmental disabilities that, on or 1690
after the effective date of this section, is named, designated, or 1691
referred to as a developmental center. 1692

(B) Notwithstanding any other provision of law, on and after 1693
the effective date of this section, any closure of a developmental 1694
center shall be subject to, and in accordance with, this section. 1695
Notwithstanding any other provision of law, if the governor 1696
announced on or after January 1, 2003, and prior to the effective 1697
date of this section the intended closure of a developmental 1698
center and if the closure identified in the announcement has not 1699
occurred prior to the effective date of this section, the closure 1700
identified in the announcement shall be subject to the criteria 1701
set forth in this section as if the announcement had been made on 1702
or after the effective date of this section, except for the time 1703
at which the notice to the general assembly must be provided as 1704
identified in division (C) of this section. 1705

(C) Notwithstanding any other provision of law, on and after 1706
the effective date of this section, at least ten days prior to 1707
making any official, public announcement that the governor intends 1708
to close one or more developmental centers, the governor shall 1709

notify the general assembly in writing that the governor intends 1710
to close one or more developmental centers. Notwithstanding any 1711
other provision of law, if the governor announced on or after 1712
January 1, 2003, and prior to the effective date of this section 1713
the intended closure of a developmental center and if the closure 1714
identified in the announcement has not occurred prior to the 1715
effective date of this section, not later than ten days after the 1716
effective date of this section, the governor shall notify the 1717
general assembly in writing of the prior announcement and that the 1718
governor intends to close the center identified in the prior 1719
announcement, and the notification to the general assembly shall 1720
constitute, for purposes of this section, the governor's official, 1721
public announcement that the governor intends to close that 1722
center. 1723

The notice required by this division shall identify by name 1724
each developmental center that the governor intends to close or, 1725
if the governor has not determined any specific developmental 1726
center to close, shall state the governor's general intent to 1727
close one or more developmental centers. When the governor 1728
notifies the general assembly as required by this division, the 1729
legislative service commission promptly shall conduct an 1730
independent study of the developmental centers of the department 1731
of mental retardation and developmental disabilities and of the 1732
department's operation of the centers, and the study shall address 1733
relevant criteria and factors, including, but not limited to, all 1734
of the following: 1735

(1) The manner in which the closure of developmental centers 1736
in general would affect the safety, health, well-being, and 1737
lifestyle of the centers' residents and their family members and 1738
would affect public safety and, if the governor's notice 1739
identifies by name one or more developmental centers that the 1740
governor intends to close, the manner in which the closure of each 1741

<u>center so identified would affect the safety, health, well-being,</u>	1742
<u>and lifestyle of the center's residents and their family members</u>	1743
<u>and would affect public safety;</u>	1744
<u>(2) The availability of alternate facilities;</u>	1745
<u>(3) The cost effectiveness of the facilities identified for</u>	1746
<u>closure;</u>	1747
<u>(4) A comparison of the cost of residing at a facility</u>	1748
<u>identified for closure and the cost of new living arrangements;</u>	1749
<u>(5) The geographic factors associated with each facility and</u>	1750
<u>its proximity to other similar facilities;</u>	1751
<u>(6) The impact of collective bargaining on facility</u>	1752
<u>operations;</u>	1753
<u>(7) The utilization and maximization of resources;</u>	1754
<u>(8) Continuity of the staff and ability to serve the facility</u>	1755
<u>population;</u>	1756
<u>(9) Continuing costs following closure of a facility;</u>	1757
<u>(10) The impact of the closure on the local economy;</u>	1758
<u>(11) Alternatives and opportunities for consolidation with</u>	1759
<u>other facilities;</u>	1760
<u>(12) How the closing of a facility identified for closure</u>	1761
<u>relates to the department's plans for the future of developmental</u>	1762
<u>centers in this state;</u>	1763
<u>(13) The effect of the closure of developmental centers in</u>	1764
<u>general upon the state's fiscal resources and fiscal status and,</u>	1765
<u>if the governor's notice identifies by name one or more</u>	1766
<u>developmental centers that the governor intends to close, the</u>	1767
<u>effect of the closure of each center so identified upon the</u>	1768
<u>state's fiscal resources and fiscal status.</u>	1769
<u>(D) The legislative service commission shall complete the</u>	1770

study required by division (C) of this section, and prepare a
report that contains its findings, not later than sixty days after
the governor makes the official, public announcement that the
governor intends to close one or more developmental centers as
described in division (C) of this section. The commission shall
provide a copy of the report to each member of the general
assembly who requests a copy of the report.

1771
1772
1773
1774
1775
1776
1777

Not later than the date on which the legislative service
commission is required to complete the report under this division,
the mental retardation and developmental disabilities
developmental center closure commission is hereby created as
described in division (E) of this section. The officials with the
duties to appoint members of the closure commission, as described
in division (E) of this section, shall appoint the specified
members of the closure commission, and, as soon as possible after
the appointments, the closure commission shall meet for the
purposes described in that division. Upon completion of the report
and the creation of the closure commission under this division,
the legislative service commission promptly shall provide a copy
of the report to the closure commission and shall present the
report as described in division (E) of this section.

1778
1779
1780
1781
1782
1783
1784
1785
1786
1787
1788
1789
1790
1791

(E)(1) A mental retardation and developmental disabilities
developmental center closure commission shall be created at the
time and in the manner specified in division (D) of this section.
The closure commission consists of six members. One member shall
be the director of the department of mental retardation and
developmental disabilities. One member shall be the director of
the department of health. One member shall be a private executive
with expertise in facility utilization, in economics, or in both
facility utilization and economics, jointly appointed by the
speaker of the house of representatives and the president of the
senate. The member appointed for expertise in facility

1792
1793
1794
1795
1796
1797
1798
1799
1800
1801
1802

utilization, economics, or both may not be a member of the general 1803
assembly and may not have a developmental center identified for 1804
closure by the governor in the county in which the member resides. 1805
One member shall be a member of the board of the Ohio civil 1806
service employees' association, jointly appointed by the speaker 1807
of the house of representatives and the president of the senate. 1808
One member shall be either a family member of a resident of a 1809
developmental center or a representative of a mental retardation 1810
and developmental disabilities advocacy group, jointly appointed 1811
by the speaker of the house of representatives and the president 1812
of the senate. The member appointed who is a family member of a 1813
developmental center resident or a representative of an advocacy 1814
group may not be a member of the general assembly. One member 1815
shall be a member of the law enforcement community, appointed by 1816
the governor. The officials with the duties to appoint members of 1817
the closure commission shall make the appointments, and the 1818
closure commission shall meet, within the time periods specified 1819
in division (D) of this section. The members of the closure 1820
commission shall serve without compensation. At the closure 1821
commission's first meeting, the members shall organize and appoint 1822
a chairperson and vice-chairperson. 1823

The closure commission shall meet as often as is necessary 1824
for the purpose of making the recommendations to the governor that 1825
are described in this division. The closure commission's meetings 1826
shall be open to the public, and the closure commission shall 1827
accept public testimony. The legislative service commission shall 1828
appear before the closure commission and present the report the 1829
legislative service commission prepared under division (D) of this 1830
section. The closure commission shall meet for the purpose of 1831
making recommendations to the governor, which recommendations may 1832
include all of the following: 1833

(a) Whether any developmental center should be closed; 1834

(b) If the recommendation described in division (E)(1)(a) of this section is that one or more developmental centers should be closed, which center or centers should be closed; 1835
1836
1837

(c) If the governor's notice described in division (C) of this section identifies by name one or more developmental centers that the governor intends to close, whether the center or centers so identified should be closed. 1838
1839
1840
1841

(2) The mental retardation and developmental disabilities developmental center closure commission, not later than sixty days after it receives the report of the legislative service commission under division (D) of this section, shall prepare a report containing its recommendations to the governor. The closure commission shall send a copy of the report to the governor and to each member of the general assembly who requests a copy of the report. Upon receipt of the closure commission's report, the governor shall review and consider the commission's recommendation. The governor shall do one of the following: 1842
1843
1844
1845
1846
1847
1848
1849
1850
1851

(a) Follow the recommendation of the commission; 1852

(b) Close no developmental center; 1853

(c) Take other action that the governor determines is necessary for the purpose of expenditure reductions or budget cuts and state the reasons for the action. 1854
1855
1856

The governor's decision is final. Upon the governor's making of the decision, the closure commission shall cease to exist. Another closure commission shall be created under this section each time the governor subsequently makes an official, public announcement that the governor intends to close one or more developmental centers. 1857
1858
1859
1860
1861
1862

Sec. 5123.081. (A) As used in this section: 1863

(1) "Applicant" means a person who is under final 1864

consideration for appointment to or employment with the department 1865
of mental retardation and developmental disabilities, including, 1866
but not limited to, a person who is being transferred to the 1867
department and an employee who is being recalled or reemployed 1868
after a layoff. 1869

(2) "Criminal records check" has the same meaning as in 1870
section 109.572 of the Revised Code. 1871

(3) "Minor drug possession offense" has the same meaning as 1872
in section 2925.01 of the Revised Code. 1873

(B) The director of mental retardation and developmental 1874
disabilities shall request the superintendent of the bureau of 1875
criminal identification and investigation to conduct a criminal 1876
records check with respect to each applicant, except that the 1877
director is not required to request a criminal records check for 1878
an employee of the department who is being considered for a 1879
different position or is returning after a leave of absence or 1880
seasonal break in employment, as long as the director has no 1881
reason to believe that the employee has committed any of the 1882
offenses listed or described in division (E) of this section. 1883

If the applicant does not present proof that the applicant 1884
has been a resident of this state for the five-year period 1885
immediately prior to the date upon which the criminal records 1886
check is requested, the director shall request that the 1887
superintendent of the bureau obtain information from the federal 1888
bureau of investigation as a part of the criminal records check 1889
for the applicant. If the applicant presents proof that the 1890
applicant has been a resident of this state for that five-year 1891
period, the director may request that the superintendent of the 1892
bureau include information from the federal bureau of 1893
investigation in the criminal records check. For purposes of this 1894
division, an applicant may provide proof of residency in this 1895

state by presenting, with a notarized statement asserting that the 1896
applicant has been a resident of this state for that five-year 1897
period, a valid driver's license, notification of registration as 1898
an elector, a copy of an officially filed federal or state tax 1899
form identifying the applicant's permanent residence, or any other 1900
document the director considers acceptable. 1901

(C) The director shall provide to each applicant a copy of 1902
the form prescribed pursuant to division (C)(1) of section 109.572 1903
of the Revised Code, provide to each applicant a standard 1904
impression sheet to obtain fingerprint impressions prescribed 1905
pursuant to division (C)(2) of section 109.572 of the Revised 1906
Code, obtain the completed form and impression sheet from each 1907
applicant, and forward the completed form and impression sheet to 1908
the superintendent of the bureau of criminal identification and 1909
investigation at the time the criminal records check is requested. 1910

Any applicant who receives pursuant to this division a copy 1911
of the form prescribed pursuant to division (C)(1) of section 1912
109.572 of the Revised Code and a copy of an impression sheet 1913
prescribed pursuant to division (C)(2) of that section and who is 1914
requested to complete the form and provide a set of fingerprint 1915
impressions shall complete the form or provide all the information 1916
necessary to complete the form and shall provide the material with 1917
the impressions of the applicant's fingerprints. If an applicant, 1918
upon request, fails to provide the information necessary to 1919
complete the form or fails to provide impressions of the 1920
applicant's fingerprints, the director shall not employ the 1921
applicant. 1922

(D) The director may request any other state or federal 1923
agency to supply the director with a written report regarding the 1924
criminal record of each applicant. With regard to an applicant who 1925
becomes a department employee, if the employee holds an 1926
occupational or professional license or other credentials, the 1927

director may request that the state or federal agency that 1928
regulates the employee's occupation or profession supply the 1929
director with a written report of any information pertaining to 1930
the employee's criminal record that the agency obtains in the 1931
course of conducting an investigation or in the process of 1932
renewing the employee's license or other credentials. 1933

(E) Except as provided in division (K)(2) of this section and 1934
in rules adopted by the director in accordance with division (M) 1935
of this section, the director shall not employ a person to fill a 1936
position with the department who has been convicted of or pleaded 1937
guilty to any of the following: 1938

(1) A violation of section 2903.01, 2903.02, 2903.03, 1939
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 1940
2903.341, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 1941
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 1942
2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 1943
2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 1944
2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 1945
2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of 1946
section 2905.04 of the Revised Code as it existed prior to July 1, 1947
1996, a violation of section 2919.23 of the Revised Code that 1948
would have been a violation of section 2905.04 of the Revised Code 1949
as it existed prior to July 1, 1996, had the violation occurred 1950
prior to that date, a violation of section 2925.11 of the Revised 1951
Code that is not a minor drug possession offense, or felonious 1952
sexual penetration in violation of former section 2907.12 of the 1953
Revised Code; 1954

(2) A felony contained in the Revised Code that is not listed 1955
in this division, if the felony bears a direct and substantial 1956
relationship to the duties and responsibilities of the position 1957
being filled; 1958

(3) Any offense contained in the Revised Code constituting a 1959

misdemeanor of the first degree on the first offense and a felony 1960
on a subsequent offense, if the offense bears a direct and 1961
substantial relationship to the position being filled and the 1962
nature of the services being provided by the department; 1963

(4) A violation of an existing or former municipal ordinance 1964
or law of this state, any other state, or the United States, if 1965
the offense is substantially equivalent to any of the offenses 1966
listed or described in division (E)(1), (2), or (3) of this 1967
section. 1968

(F) Prior to employing an applicant, the director shall 1969
require the applicant to submit a statement with the applicant's 1970
signature attesting that the applicant has not been convicted of 1971
or pleaded guilty to any of the offenses listed or described in 1972
division (E) of this section. The director also shall require the 1973
applicant to sign an agreement under which the applicant agrees to 1974
notify the director within fourteen calendar days if, while 1975
employed with the department, the applicant is ever formally 1976
charged with, convicted of, or pleads guilty to any of the 1977
offenses listed or described in division (E) of this section. The 1978
agreement shall inform the applicant that failure to report formal 1979
charges, a conviction, or a guilty plea may result in being 1980
dismissed from employment. 1981

(G) The director shall pay to the bureau of criminal 1982
identification and investigation the fee prescribed pursuant to 1983
division (C)(3) of section 109.572 of the Revised Code for each 1984
criminal records check requested and conducted pursuant to this 1985
section. 1986

(H)(1) Any report obtained pursuant to this section is not a 1987
public record for purposes of section 149.43 of the Revised Code 1988
and shall not be made available to any person, other than the 1989
applicant who is the subject of the records check or criminal 1990
records check or the applicant's representative, the department or 1991

its representative, a county board of mental retardation and 1992
developmental disabilities, and any court, hearing officer, or 1993
other necessary individual involved in a case dealing with the 1994
denial of employment to the applicant or the denial, suspension, 1995
or revocation of a certificate or evidence of registration under 1996
section 5123.082 of the Revised Code. 1997

(2) An individual for whom the director has obtained reports 1998
under this section may submit a written request to the director to 1999
have copies of the reports sent to any state agency, entity of 2000
local government, or private entity. The individual shall specify 2001
in the request the agencies or entities to which the copies are to 2002
be sent. On receiving the request, the director shall send copies 2003
of the reports to the agencies or entities specified. 2004

The director may request that a state agency, entity of local 2005
government, or private entity send copies to the director of any 2006
report regarding a records check or criminal records check that 2007
the agency or entity possesses, if the director obtains the 2008
written consent of the individual who is the subject of the 2009
report. 2010

(I) The director shall request the registrar of motor 2011
vehicles to supply the director with a certified abstract 2012
regarding the record of convictions for violations of motor 2013
vehicle laws of each applicant who will be required by the 2014
applicant's employment to transport individuals with mental 2015
retardation or a developmental disability or to operate the 2016
department's vehicles for any other purpose. For each abstract 2017
provided under this section, the director shall pay the amount 2018
specified in section 4509.05 of the Revised Code. 2019

(J) The director shall provide each applicant with a copy of 2020
any report or abstract obtained about the applicant under this 2021
section. 2022

(K)(1) The director shall inform each person, at the time of the person's initial application for employment, that the person is required to provide a set of impressions of the person's fingerprints and that a criminal records check is required to be conducted and satisfactorily completed in accordance with section 109.572 of the Revised Code if the person comes under final consideration for employment as a precondition to employment in a position.

(2) The director may employ an applicant pending receipt of reports requested under this section. The director shall terminate employment of any such applicant if it is determined from the reports that the applicant failed to inform the director that the applicant had been convicted of or pleaded guilty to any of the offenses listed or described in division (E) of this section.

(L) The director may charge an applicant a fee for costs the director incurs in obtaining reports, abstracts, or fingerprint impressions under this section. A fee charged under this division shall not exceed the amount of the fees the director pays under divisions (G) and (I) of this section. If a fee is charged under this division, the director shall notify the applicant of the amount of the fee at the time of the applicant's initial application for employment and that, unless the fee is paid, the director will not consider the applicant for employment.

(M) The director shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section, including rules specifying circumstances under which the director may employ a person who has been convicted of or pleaded guilty to an offense listed or described in division (E) of this section but who meets standards in regard to rehabilitation set by the director.

Sec. 5123.50. As used in this section and sections 5123.51 and, 5123.52, and 5123.541 of the Revised Code:

(A) "Abuse" means all of the following:	2054
(1) The use of physical force that can reasonably be expected to result in physical harm or serious physical harm;	2055 2056
(2) Sexual abuse;	2057
(3) Verbal abuse.	2058
(B) "Misappropriation" means depriving, defrauding, or otherwise obtaining the real or personal property of an individual by any means prohibited by the Revised Code, including violations of Chapter 2911. or 2913. of the Revised Code.	2059 2060 2061 2062
(C) "MR/DD employee" means all of the following:	2063
(1) An employee of the department of mental retardation and developmental disabilities;	2064 2065
(2) An employee of a county board of mental retardation and developmental disabilities;	2066 2067
(3) An employee in a position that includes providing specialized services to an individual with mental retardation or a <u>another</u> developmental disability.	2068 2069 2070
(D) "Neglect" means, when there is a duty to do so, failing to provide an individual with any treatment, care, goods, or services that are necessary to maintain the health and safety of the individual.	2071 2072 2073 2074
(E) "Physical harm" and "serious physical harm" have the same meanings as in section 2901.01 of the Revised Code.	2075 2076
(F) "Sexual abuse" means unlawful sexual conduct or sexual contact, as those terms are defined in section 2907.01 of the Revised Code.	2077 2078 2079
(G) "Specialized services" means any program or service designed and operated to serve primarily individuals with mental retardation or a developmental disability, including a program or	2080 2081 2082

service provided by an entity licensed or certified by the 2083
department of mental retardation and developmental disabilities. A 2084
program or service available to the general public is not a 2085
specialized service. 2086

(H) "Verbal abuse" means purposely using words to threaten, 2087
coerce, intimidate, harass, or humiliate an individual. 2088

(I) "Sexual conduct," "sexual contact," and "spouse" have the 2089
same meanings as in section 2907.01 of the Revised Code. 2090

Sec. 5123.51. (A) In addition to any other action required by 2091
sections 5123.61 and 5126.31 of the Revised Code, the department 2092
of mental retardation and developmental disabilities shall review 2093
each report the department receives of abuse or neglect of an 2094
individual with mental retardation or a developmental disability 2095
or misappropriation of an individual's property that includes an 2096
allegation that an MR/DD employee committed or was responsible for 2097
the abuse, neglect, or misappropriation. The department shall 2098
review a report it receives from a public children services agency 2099
only after the agency completes its investigation pursuant to 2100
section 2151.421 of the Revised Code. On receipt of a notice under 2101
section 2930.061 or 5123.541 of the Revised Code, the department 2102
shall review the notice. 2103

2104

(B) The department shall do both of the following: 2105

(1) Investigate the allegation or adopt the findings of an 2106
investigation or review of the allegation conducted by another 2107
person or government entity and determine whether there is a 2108
reasonable basis for the allegation; 2109

(2) If the department determines that there is a reasonable 2110
basis for the allegation, conduct an adjudication pursuant to 2111
Chapter 119. of the Revised Code. 2112

(C)(1) The department shall appoint an independent hearing officer to conduct any hearing conducted pursuant to division (B)(2) of this section, except that, if the hearing is regarding an employee of the department who is represented by a union, the department and a representative of the union shall jointly select the hearing officer.

(2) ~~No~~ (a) Except as provided in division (C)(2)(b) of this section, no hearing shall be conducted under division (B)(2) of this section until any criminal proceeding or collective bargaining arbitration concerning the same allegation has concluded.

(b) The department may conduct a hearing pursuant to division (B)(2) of this section before a criminal proceeding concerning the same allegation is concluded if both of the following are the case:

(i) The department notifies the prosecutor responsible for the criminal proceeding that the department proposes to conduct a hearing.

(ii) The prosecutor consents to the hearing.

(3) In conducting a hearing pursuant to division (B)(2) of this section, the hearing officer shall do ~~both~~ all of the following:

(a) Determine whether there is clear and convincing evidence that the MR/DD employee has done any of the following:

(i) Misappropriated the property of ~~an individual~~ one or more individuals with mental retardation or a developmental disability that has a value, either separately or taken together, of one hundred dollars or more;

(ii) Misappropriated property of an individual with mental retardation or a developmental disability that is designed to be

<u>used as a check, draft, negotiable instrument, credit card, charge</u>	2143
<u>card, or device for initiating an electronic fund transfer at a</u>	2144
<u>point of sale terminal, automated teller machine, or cash</u>	2145
<u>dispensing machine;</u>	2146
(ii) (iii) Knowingly abused or neglected such an individual;	2147
(iii) (iv) Recklessly abused or neglected such an individual,	2148
with resulting physical harm;	2149
(iv) (v) Negligently abused or neglected such an individual,	2150
with resulting serious physical harm;	2151
(vi) <u>Recklessly neglected such an individual, creating a</u>	2152
<u>substantial risk of serious physical harm;</u>	2153
(vii) <u>Engaged in sexual conduct or had sexual contact with an</u>	2154
<u>individual with mental retardation or another developmental</u>	2155
<u>disability who was not the MR/DD employee's spouse and for whom</u>	2156
<u>the MR/DD employee was employed or under a contract to provide</u>	2157
<u>care;</u>	2158
(viii) <u>Unreasonably failed to make a report pursuant to</u>	2159
<u>division (C) of section 5123.61 of the Revised Code when the</u>	2160
<u>employee knew or should have known that the failure would result</u>	2161
<u>in a substantial risk of harm to an individual with mental</u>	2162
<u>retardation or a developmental disability.</u>	2163
(b) Give weight to the decision in any collective bargaining	2164
arbitration regarding the same allegation;	2165
(c) <u>Give weight to any relevant facts presented at the</u>	2166
<u>hearing.</u>	2167
(D)(1) Unless the director of mental retardation and	2168
developmental disabilities determines that there are extenuating	2169
circumstances and except as provided in divisions (D)(4) and	2170
<u>division (E) of this section, the director shall include in the</u>	2171
<u>registry established under section 5123.52 of the Revised Code the</u>	2172

~~name of an MR/DD employee if the director, after considering all~~ 2173
~~of the factors listed in division (C)(3) of this section, finds~~ 2174
that there is clear and convincing evidence that ~~the~~ an MR/DD 2175
employee has done one or more of the things described in division 2176
(C)(3)(a) of this section the director shall include the name of 2177
the employee in the registry established under section 5123.52 of 2178
the Revised Code. 2179

(2) Extenuating circumstances the director must consider 2180
include the use of physical force by an MR/DD employee that was 2181
necessary as self-defense. 2182

(3) If the director includes an MR/DD employee in the 2183
registry established under section 5123.52 of the Revised Code, 2184
the director shall notify the employee, the person or government 2185
entity that employs or contracts with the employee, the individual 2186
with mental retardation or a developmental disability who was the 2187
subject of the report and that individual's legal guardian, if 2188
any, the attorney general, and the prosecuting attorney or other 2189
law enforcement agency. If the MR/DD employee holds a license, 2190
certificate, registration, or other authorization to engage in a 2191
profession issued pursuant to Title XLVII of the Revised Code, the 2192
director shall notify the appropriate agency, board, department, 2193
or other entity responsible for regulating the employee's 2194
professional practice. 2195

~~(4) The director shall not include in the registry an~~ 2196
~~individual who has been found not guilty by a court or jury of an~~ 2197
~~offense arising from the same facts~~ If an individual whose name 2198
appears on the registry is involved in a court proceeding or 2199
arbitration arising from the same facts as the allegation 2200
resulting in the individual's placement on the registry, the 2201
disposition of the proceeding or arbitration shall be noted in the 2202
registry next to the individual's name. 2203

(E) In the case of an allegation concerning an employee of 2204

the department, after the hearing conducted pursuant to division 2205
(B)(2) of this section, the director of health or that director's 2206
designee shall review the decision of the hearing officer to 2207
determine whether the standard described in division (C)~~(2)~~(3) of 2208
this section has been met. If the director or designee determines 2209
that the standard has been met and that no extenuating 2210
circumstances exist, the director or designee shall notify the 2211
director of mental retardation and developmental disabilities that 2212
the MR/DD employee is to be included in the registry established 2213
under section 5123.52 of the Revised Code. If the director of 2214
mental retardation and developmental disabilities receives such 2215
notification, the director shall include the MR/DD employee in the 2216
registry, ~~unless division (D)(4) of this section applies,~~ and 2217
shall provide the notification described in division (D)(3) of 2218
this section. 2219

(F) If the department is required by Chapter 119. of the 2220
Revised Code to give notice of an opportunity for a hearing and 2221
the MR/DD employee subject to the notice does not timely request a 2222
hearing in accordance with section 119.07 of the Revised Code, the 2223
department is not required to hold a hearing. 2224

(G) Files and records of investigations conducted pursuant to 2225
this section are not public records as defined in section 149.43 2226
of the Revised Code, but, on request, the department shall provide 2227
copies of those files and records to the attorney general, a 2228
prosecuting attorney, or a law enforcement agency. 2229

Sec. 5123.541. (A) No MR/DD employee shall engage in any 2230
sexual conduct or have any sexual contact with an individual with 2231
mental retardation or another developmental disability for whom 2232
the MR/DD employee is employed or under a contract to provide care 2233
unless the individual is the MR/DD employee's spouse. 2234

(B) Any MR/DD employee who violates division (A) of this 2235

section shall be eligible to be included in the registry regarding 2236
misappropriation, abuse, neglect, or other specified misconduct by 2237
MR/DD employees established under section 5123.52 of the Revised 2238
Code, in addition to any other sanction or penalty authorized or 2239
required by law. 2240

(C)(1) Any person listed in division (C)(2) of section 2241
5123.61 of the Revised Code who has reason to believe that an 2242
MR/DD employee has violated division (A) of this section shall 2243
immediately report that belief to the department of mental 2244
retardation and developmental disabilities. 2245

(2) Any person who has reason to believe that an MR/DD 2246
employee has violated division (A) of this section may report that 2247
belief to the department of mental retardation and developmental 2248
disabilities. 2249

Sec. 5123.542. (A) Each of the following shall annually 2250
provide a written notice to each of its MR/DD employees explaining 2251
the conduct for which an MR/DD employee may be included in the 2252
registry established under section 5123.52 of the Revised Code: 2253

(1) The department of mental retardation and developmental 2254
disabilities; 2255

(2) Each county board of mental retardation and developmental 2256
disabilities; 2257

(3) Each contracting entity, as defined in section 5126.281 2258
of the Revised Code; 2259

(4) Each owner, operator, or administrator of a residential 2260
facility, as defined in section 5123.19 of the Revised Code; 2261

(5) Each owner, operator, or administrator of a program 2262
certified by the department to provide supported living. 2263

(B) The notice described in division (A) of this section 2264

shall be in a form and provided in a manner prescribed by the 2265
department of mental retardation and developmental disabilities. 2266
The form shall be the same for all persons and entities required 2267
to provide notice under division (A) of this section. 2268

(C) The fact that an MR/DD employee does not receive the 2269
notice required by this section does not exempt the employee from 2270
inclusion in the registry established under section 5123.52 of the 2271
Revised Code. 2272

Sec. 5123.61. (A) As used in this section: 2273

(1) "Law enforcement agency" means the state highway patrol, 2274
the police department of a municipal corporation, or a county 2275
sheriff. 2276

(2) "Abuse" has the same meaning as in section 5123.50 of the 2277
Revised Code, except that it includes a misappropriation, as 2278
defined in that section. 2279

(3) "Neglect" has the same meaning as in section 5123.50 of 2280
the Revised Code. 2281

(B) The department of mental retardation and developmental 2282
disabilities shall establish a registry office for the purpose of 2283
maintaining reports of abuse, neglect, and other major unusual 2284
incidents made to the department under this section and reports 2285
received from county boards of mental retardation and 2286
developmental disabilities under section 5126.31 of the Revised 2287
Code. The department shall establish committees to review reports 2288
of abuse, neglect, and other major unusual incidents. 2289

(C)(1) Any person listed in division (C)(2) of this section, 2290
having reason to believe that a person with mental retardation or 2291
a developmental disability has suffered or faces a substantial 2292
risk of suffering any wound, injury, disability, or condition of 2293
such a nature as to reasonably indicate abuse or neglect of that 2294

person, shall immediately report or cause reports to be made of 2295
such information to the entity specified in this division. Except 2296
as provided in section 5120.173 of the Revised Code or as 2297
otherwise provided in this division, the person making the report 2298
shall make it to a law enforcement agency or to the county board 2299
of mental retardation and developmental disabilities, ~~except that~~ 2300
~~if.~~ If the report concerns a resident of a facility operated by 2301
the department of mental retardation and developmental 2302
disabilities the report shall be made either to a law enforcement 2303
agency or to the department. If the report concerns any act or 2304
omission of an employee of a county board of mental retardation 2305
and developmental disabilities, the report immediately shall be 2306
made to the department and to the county board. 2307

(2) All of the following persons are required to make a 2308
report under division (C)(1) of this section: 2309

(a) Any physician, including a hospital intern or resident, 2310
any dentist, podiatrist, chiropractor, practitioner of a limited 2311
branch of medicine as specified in section 4731.15 of the Revised 2312
Code, hospital administrator or employee of a hospital, nurse 2313
licensed under Chapter 4723. of the Revised Code, employee of an 2314
ambulatory health facility as defined in section 5101.61 of the 2315
Revised Code, employee of a home health agency, employee of an 2316
adult care facility licensed under Chapter 3722. of the Revised 2317
Code, or employee of a community mental health facility; 2318

(b) Any school teacher or school authority, social worker, 2319
psychologist, attorney, peace officer, coroner, ~~clergyman,~~ or 2320
residents' rights advocate as defined in section 3721.10 of the 2321
Revised Code; 2322

(c) A superintendent, board member, or employee of a county 2323
board of mental retardation and developmental disabilities; an 2324
administrator, board member, or employee of a residential facility 2325
licensed under section 5123.19 of the Revised Code; an 2326

administrator, board member, or employee of any other public or 2327
private provider of services to a person with mental retardation 2328
or a developmental disability, or any MR/DD employee, as defined 2329
in section 5123.50 of the Revised Code; 2330

(d) A member of a citizen's advisory council established at 2331
an institution or branch institution of the department of mental 2332
retardation and developmental disabilities under section 5123.092 2333
of the Revised Code; 2334

(e) A clergyman who is employed in a position that includes 2335
providing specialized services to an individual with mental 2336
retardation or another developmental disability, while acting in 2337
an official or professional capacity in that position, or a person 2338
who is employed in a position that includes providing specialized 2339
services to an individual with mental retardation or another 2340
developmental disability and who, while acting in an official or 2341
professional capacity, renders spiritual treatment through prayer 2342
in accordance with the tenets of an organized religion. 2343

(3)(a) The reporting requirements of this division do not 2344
apply to members of the legal rights service commission or to 2345
employees of the legal rights service. 2346

(b) An attorney or physician is not required to make a report 2347
pursuant to division (C)(1) of this section concerning any 2348
communication the attorney or physician receives from a client or 2349
patient in an attorney-client or physician-patient relationship, 2350
if, in accordance with division (A) or (B) of section 2317.02 of 2351
the Revised Code, the attorney or physician could not testify with 2352
respect to that communication in a civil or criminal proceeding, 2353
except that the client or patient is deemed to have waived any 2354
testimonial privilege under division (A) or (B) of section 2317.02 2355
of the Revised Code with respect to that communication and the 2356
attorney or physician shall make a report pursuant to division 2357
(C)(1) of this section, if both of the following apply: 2358

(i) The client or patient, at the time of the communication, 2359
is a person with mental retardation or a developmental disability. 2360

(ii) The attorney or physician knows or suspects, as a result 2361
of the communication or any observations made during that 2362
communication, that the client or patient has suffered or faces a 2363
substantial risk of suffering any wound, injury, disability, or 2364
condition of a nature that reasonably indicates abuse or neglect 2365
of the client or patient. 2366

(4) Any person who fails to make a report required under 2367
division (C) of this section and who is an MR/DD employee, as 2368
defined in section 5123.50 of the Revised Code, shall be eligible 2369
to be included in the registry regarding misappropriation, abuse, 2370
neglect, or other specified misconduct by MR/DD employees 2371
established under section 5123.52 of the Revised Code. 2372

(D) The reports required under division (C) of this section 2373
shall be made forthwith by telephone or in person and shall be 2374
followed by a written report. The reports shall contain the 2375
following: 2376

(1) The names and addresses of the person with mental 2377
retardation or a developmental disability and the person's 2378
custodian, if known; 2379

(2) The age of the person with mental retardation or a 2380
developmental disability; 2381

(3) Any other information that would assist in the 2382
investigation of the report. 2383

(E) When a physician performing services as a member of the 2384
staff of a hospital or similar institution has reason to believe 2385
that a person with mental retardation or a developmental 2386
disability has suffered injury, abuse, or physical neglect, the 2387
physician shall notify the person in charge of the institution or 2388

that person's designated delegate, who shall make the necessary reports. 2389
2390

(F) Any person having reasonable cause to believe that a person with mental retardation or a developmental disability has suffered or faces a substantial risk of suffering abuse or neglect may report ~~the belief,~~ or cause a report to be made, of that belief to the entity specified in this division. Except as provided in section 5120.173 of the Revised Code or as otherwise provided in this division, the person making the report shall make it to a law enforcement agency or the county board of mental retardation and developmental disabilities, ~~or, if.~~ If the person is a resident of a facility operated by the department of mental retardation and developmental disabilities, the report shall be made to a law enforcement agency or to the department. If the report concerns any act or omission of an employee of a county board of mental retardation and developmental disabilities, the report immediately shall be made to the department and to the county board. 2391
2392
2393
2394
2395
2396
2397
2398
2399
2400
2401
2402
2403
2404
2405
2406

(G)(1) Upon the receipt of a report concerning the possible abuse or neglect of a person with mental retardation or a developmental disability, the law enforcement agency shall inform the county board of mental retardation and developmental disabilities or, if the person is a resident of a facility operated by the department of mental retardation and developmental disabilities, the director of the department or the director's designee. 2407
2408
2409
2410
2411
2412
2413
2414

(2) On receipt of a report under this section that includes an allegation of action or inaction that may constitute a crime under federal law or the law of this state, the department of mental retardation and developmental disabilities shall notify the law enforcement agency. 2415
2416
2417
2418
2419

(3) When a county board of mental retardation and 2420

developmental disabilities receives a report under this section 2421
that includes an allegation of action or inaction that may 2422
constitute a crime under federal law or the law of this state, the 2423
superintendent of the board or an individual the superintendent 2424
designates under division (H) of this section shall notify the law 2425
enforcement agency. The superintendent or individual shall notify 2426
the department of mental retardation and developmental 2427
disabilities when it receives any report under this section. 2428

(4) When a county board of mental retardation and 2429
developmental disabilities receives a report under this section 2430
and believes that the degree of risk to the person is such that 2431
the report is an emergency, the superintendent of the board or an 2432
employee of the board the superintendent designates shall attempt 2433
a face-to-face contact with the person with mental retardation or 2434
a developmental disability who allegedly is the victim within one 2435
hour of the board's receipt of the report. 2436

(H) The superintendent of the board may designate an 2437
individual to be responsible for notifying the law enforcement 2438
agency and the department when the county board receives a report 2439
under this section. 2440

(I) An adult with mental retardation or a developmental 2441
disability about whom a report is made may be removed from the 2442
adult's place of residence only by law enforcement officers who 2443
consider that the adult's immediate removal is essential to 2444
protect the adult from further injury or abuse or in accordance 2445
with the order of a court made pursuant to section 5126.33 of the 2446
Revised Code. 2447

(J) A law enforcement agency shall investigate each report of 2448
abuse or neglect it receives under this section. In addition, the 2449
department, in cooperation with law enforcement officials, shall 2450
investigate each report regarding a resident of a facility 2451
operated by the department to determine the circumstances 2452

surrounding the injury, the cause of the injury, and the person 2453
responsible. The investigation shall be in accordance with the 2454
memorandum of understanding prepared under section 5126.058 of the 2455
Revised Code. The department shall determine, with the registry 2456
office which shall be maintained by the department, whether prior 2457
reports have been made concerning ~~and~~ an adult with mental 2458
retardation or a developmental disability or other principals in 2459
the case. If the department finds that the report involves action 2460
or inaction that may constitute a crime under federal law or the 2461
law of this state, it shall submit a report of its investigation, 2462
in writing, to the law enforcement agency. If the person with 2463
mental retardation or a developmental disability is an adult, with 2464
the consent of the adult, the department shall provide such 2465
protective services as are necessary to protect the adult. The law 2466
enforcement agency shall make a written report of its findings to 2467
the department. 2468

If the person is an adult and is not a resident of a facility 2469
operated by the department, the county board of mental retardation 2470
and developmental disabilities shall review the report of abuse or 2471
neglect in accordance with sections 5126.30 to 5126.33 of the 2472
Revised Code and the law enforcement agency shall make the written 2473
report of its findings to the county board. 2474

(K) Any person or any hospital, institution, school, health 2475
department, or agency participating in the making of reports 2476
pursuant to this section, any person participating as a witness in 2477
an administrative or judicial proceeding resulting from the 2478
reports, or any person or governmental entity that discharges 2479
responsibilities under sections 5126.31 to 5126.33 of the Revised 2480
Code shall be immune from any civil or criminal liability that 2481
might otherwise be incurred or imposed as a result of such actions 2482
except liability for perjury, unless the person or governmental 2483
entity has acted in bad faith or with malicious purpose. 2484

(L) No employer or any person with the authority to do so 2485
shall discharge, demote, transfer, prepare a negative work 2486
performance evaluation, reduce pay or benefits, terminate work 2487
privileges, or take any other action detrimental to an employee or 2488
retaliate against an employee as a result of the employee's having 2489
made a report under this section. This division does not preclude 2490
an employer or person with authority from taking action with 2491
regard to an employee who has made a report under this section if 2492
there is another reasonable basis for the action. 2493

(M) Reports made under this section are not public records as 2494
defined in section 149.43 of the Revised Code. Information 2495
contained in the reports on request shall be made available to the 2496
person who is the subject of the report, to the person's legal 2497
counsel, and to agencies authorized to receive information in the 2498
report by the department or by a county board of mental 2499
retardation and developmental disabilities. 2500

(N) Notwithstanding section 4731.22 of the Revised Code, the 2501
physician-patient privilege shall not be a ground for excluding 2502
evidence regarding the injuries or physical neglect of a person 2503
with mental retardation or a developmental disability or the cause 2504
thereof in any judicial proceeding resulting from a report 2505
submitted pursuant to this section. 2506

Sec. 5123.614. (A) Subject to division (B) of this section, 2507
on receipt of a report of a major unusual incident made pursuant 2508
to section 5123.61 or 5126.31 of the Revised Code or rules adopted 2509
under section 5123.612 of the Revised Code, the department of 2510
mental retardation and developmental disabilities may do either of 2511
the following: 2512

(1) Conduct an independent review or investigation of the 2513
incident; 2514

(2) Request that an independent review or investigation of the incident be conducted by a county board of mental retardation and developmental disabilities that is not implicated in the report, a regional council of government, or any other entity authorized to conduct such investigations. 2515
2516
2517
2518
2519

(B) If a report described in division (A) of this section concerning the health or safety of a person with mental retardation or a developmental disability involves an allegation that an employee of a county board of mental retardation and developmental disabilities has created a substantial risk of serious physical harm to a person with mental retardation or a developmental disability, the department shall do one of the following: 2520
2521
2522
2523
2524
2525
2526
2527

(1) Conduct an independent investigation regarding the incident; 2528
2529

(2) Request that an independent review or investigation of the incident be conducted by a county board of mental retardation and developmental disabilities that is not implicated in the report, a regional council of government, or any other entity authorized to conduct such investigations. 2530
2531
2532
2533
2534

Sec. 5123.99. (A) Whoever violates section 5123.20 of the Revised Code is guilty of a misdemeanor of the first degree. 2535
2536

(B) Whoever violates division (C), (E), or (G)(3) of section 5123.61 of the Revised Code ~~shall be fined not more than five hundred dollars~~ is guilty of a misdemeanor of the fourth degree or, if the abuse or neglect constitutes a felony, a misdemeanor of the second degree. In addition to any other sanction or penalty authorized or required by law, if a person who is convicted of or pleads guilty to a violation of division (C), (E), or (G)(3) of section 5123.61 of the Revised Code is an MR/DD employee, as 2537
2538
2539
2540
2541
2542
2543
2544

defined in section 5123.50 of the Revised Code, the offender shall 2545
be eligible to be included in the registry regarding 2546
misappropriation, abuse, neglect, or other specified misconduct by 2547
MR/DD employees established under section 5123.52 of the Revised 2548
Code. 2549

(C) Whoever violates division (A) of section 5123.604 of the 2550
Revised Code is guilty of a misdemeanor of the second degree. 2551

(D) Whoever violates division (B) of section 5123.604 of the 2552
Revised Code shall be fined not more than one thousand dollars. 2553
Each violation constitutes a separate offense. 2554

Sec. 5126.058. (A) Each county board of mental retardation 2555
and developmental disabilities shall prepare a memorandum of 2556
understanding that is developed by all of the following and that 2557
is signed by the persons identified in divisions (A)(3) to (8) of 2558
this section: 2559

(1) If there is only one probate judge in the county, the 2560
probate judge of the county or the probate judge's representative; 2561

(2) If there is more than one probate judge in the county, a 2562
probate judge or the probate judge's representative selected by 2563
the probate judges or, if they are unable to do so for any reason, 2564
the probate judge who is senior in point of service or the senior 2565
probate judge's representative; 2566

(3) The county peace officer; 2567

(4) All chief municipal peace officers within the county; 2568

(5) Other law enforcement officers handling abuse, neglect, 2569
and exploitation of mentally retarded and developmentally disabled 2570
persons in the county; 2571

(6) The prosecuting attorney of the county; 2572

(7) The public children services agency; 2573

(8) The coroner of the county. 2574

(B) A memorandum of understanding shall set forth the normal 2575
operating procedure to be employed by all concerned officials in 2576
the execution of their respective responsibilities under this 2577
section and sections 313.12, 2151.421, 2903.16, 5126.31, and 2578
5126.33 of the Revised Code and shall have as its primary goal the 2579
elimination of all unnecessary interviews of persons who are the 2580
subject of reports made pursuant to this section. A failure to 2581
follow the procedure set forth in the memorandum by the concerned 2582
officials is not grounds for, and shall not result in, the 2583
dismissal of any charge or complaint arising from any reported 2584
case of abuse, neglect, or exploitation or the suppression of any 2585
evidence obtained as a result of any reported abuse, neglect, or 2586
exploitation and does not give any rights or grounds for appeal or 2587
post-conviction relief to any person. 2588

(C) A memorandum of understanding shall include, but is not 2589
limited to, all of the following: 2590

(1) The roles and responsibilities for handling emergency and 2591
nonemergency cases of abuse, neglect, or exploitation; 2592

(2) The roles and responsibilities for handling and 2593
coordinating investigations of reported cases of abuse, neglect, 2594
or exploitation and methods to be used in interviewing the person 2595
who is the subject of the report and who allegedly was abused, 2596
neglected, or exploited; 2597

(3) The roles and responsibilities for addressing the 2598
categories of persons who may interview the person who is the 2599
subject of the report and who allegedly was abused, neglected, or 2600
exploited; 2601

(4) The roles and responsibilities for providing victim 2602
services to mentally retarded and developmentally disabled persons 2603
pursuant to Chapter 2930. of the Revised Code; 2604

(5) The roles and responsibilities for the filing of criminal charges against persons alleged to have abused, neglected, or exploited mentally retarded or developmentally disabled persons. 2605
2606
2607

(D) A memorandum of understanding may be signed by victim advocates, municipal court judges, municipal prosecutors, and any other person whose participation furthers the goals of a memorandum of understanding, as set forth in this section. 2608
2609
2610
2611

Sec. 5126.28. (A) As used in this section: 2612

(1) "Applicant" means a person who is under final consideration for appointment or employment in a position with a county board of mental retardation and developmental disabilities, including, but not limited to, a person who is being transferred to the county board and an employee who is being recalled or reemployed after a layoff. 2613
2614
2615
2616
2617
2618

(2) "Criminal records check" has the same meaning as in section 109.572 of the Revised Code. 2619
2620

(3) "Minor drug possession offense" has the same meaning as in section 2925.01 of the Revised Code. 2621
2622

(B) The superintendent of a county board of mental retardation and developmental disabilities shall request the superintendent of the bureau of criminal identification and investigation to conduct a criminal records check with respect to any applicant who has applied to the board for employment in any position, except that a county board superintendent is not required to request a criminal records check for an employee of the board who is being considered for a different position or is returning after a leave of absence or seasonal break in employment, as long as the superintendent has no reason to believe that the employee has committed any of the offenses listed or described in division (E) of this section. 2623
2624
2625
2626
2627
2628
2629
2630
2631
2632
2633
2634

If the applicant does not present proof that the applicant 2635
has been a resident of this state for the five-year period 2636
immediately prior to the date upon which the criminal records 2637
check is requested, the county board superintendent shall request 2638
that the superintendent of the bureau obtain information from the 2639
federal bureau of investigation as a part of the criminal records 2640
check for the applicant. If the applicant presents proof that the 2641
applicant has been a resident of this state for that five-year 2642
period, the county board superintendent may request that the 2643
superintendent of the bureau include information from the federal 2644
bureau of investigation in the criminal records check. For 2645
purposes of this division, an applicant may provide proof of 2646
residency in this state by presenting, with a notarized statement 2647
asserting that the applicant has been a resident of this state for 2648
that five-year period, a valid driver's license, notification of 2649
registration as an elector, a copy of an officially filed federal 2650
or state tax form identifying the applicant's permanent residence, 2651
or any other document the superintendent considers acceptable. 2652

(C) The county board superintendent shall provide to each 2653
applicant a copy of the form prescribed pursuant to division 2654
(C)(1) of section 109.572 of the Revised Code, provide to each 2655
applicant a standard impression sheet to obtain fingerprint 2656
impressions prescribed pursuant to division (C)(2) of section 2657
109.572 of the Revised Code, obtain the completed form and 2658
impression sheet from each applicant, and forward the completed 2659
form and impression sheet to the superintendent of the bureau of 2660
criminal identification and investigation at the time the criminal 2661
records check is requested. 2662

Any applicant who receives pursuant to this division a copy 2663
of the form prescribed pursuant to division (C)(1) of section 2664
109.572 of the Revised Code and a copy of an impression sheet 2665
prescribed pursuant to division (C)(2) of that section and who is 2666

requested to complete the form and provide a set of fingerprint 2667
impressions shall complete the form or provide all the information 2668
necessary to complete the form and shall provide the impression 2669
sheet with the impressions of the applicant's fingerprints. If an 2670
applicant, upon request, fails to provide the information 2671
necessary to complete the form or fails to provide impressions of 2672
the applicant's fingerprints, the county board superintendent 2673
shall not employ that applicant. 2674

(D) A county board superintendent may request any other state 2675
or federal agency to supply the board with a written report 2676
regarding the criminal record of each applicant. With regard to an 2677
applicant who becomes a board employee, if the employee holds an 2678
occupational or professional license or other credentials, the 2679
superintendent may request that the state or federal agency that 2680
regulates the employee's occupation or profession supply the board 2681
with a written report of any information pertaining to the 2682
employee's criminal record that the agency obtains in the course 2683
of conducting an investigation or in the process of renewing the 2684
employee's license or other credentials. 2685

(E) Except as provided in division (K)(2) of this section and 2686
in rules adopted by the department of mental retardation and 2687
developmental disabilities in accordance with division (M) of this 2688
section, no county board of mental retardation and developmental 2689
disabilities shall employ a person to fill a position with the 2690
board who has been convicted of or pleaded guilty to any of the 2691
following: 2692

(1) A violation of section 2903.01, 2903.02, 2903.03, 2693
2903.04, 2903.11, 2903.12, 2903.13, 2903.16, 2903.21, 2903.34, 2694
2903.341, 2905.01, 2905.02, 2905.05, 2907.02, 2907.03, 2907.04, 2695
2907.05, 2907.06, 2907.07, 2907.08, 2907.09, 2907.21, 2907.22, 2696
2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2697
2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.22, 2919.24, 2698

2919.25, 2923.12, 2923.13, 2923.161, 2925.02, 2925.03, 2925.04, 2699
2925.05, 2925.06, or 3716.11 of the Revised Code, a violation of 2700
section 2905.04 of the Revised Code as it existed prior to July 1, 2701
1996, a violation of section 2919.23 of the Revised Code that 2702
would have been a violation of section 2905.04 of the Revised Code 2703
as it existed prior to July 1, 1996, had the violation occurred 2704
prior to that date, a violation of section 2925.11 of the Revised 2705
Code that is not a minor drug possession offense, or felonious 2706
sexual penetration in violation of former section 2907.12 of the 2707
Revised Code; 2708

(2) A felony contained in the Revised Code that is not listed 2709
in this division, if the felony bears a direct and substantial 2710
relationship to the duties and responsibilities of the position 2711
being filled; 2712

(3) Any offense contained in the Revised Code constituting a 2713
misdemeanor of the first degree on the first offense and a felony 2714
on a subsequent offense, if the offense bears a direct and 2715
substantial relationship to the position being filled and the 2716
nature of the services being provided by the county board; 2717

(4) A violation of an existing or former municipal ordinance 2718
or law of this state, any other state, or the United States, if 2719
the offense is substantially equivalent to any of the offenses 2720
listed or described in division (E)(1), (2), or (3) of this 2721
section. 2722

(F) Prior to employing an applicant, the county board 2723
superintendent shall require the applicant to submit a statement 2724
with the applicant's signature attesting that the applicant has 2725
not been convicted of or pleaded guilty to any of the offenses 2726
listed or described in division (E) of this section. The 2727
superintendent also shall require the applicant to sign an 2728
agreement under which the applicant agrees to notify the 2729
superintendent within fourteen calendar days if, while employed by 2730

the board, the applicant is ever formally charged with, convicted 2731
of, or pleads guilty to any of the offenses listed or described in 2732
division (E) of this section. The agreement shall inform the 2733
applicant that failure to report formal charges, a conviction, or 2734
a guilty plea may result in being dismissed from employment. 2735

(G) A county board of mental retardation and developmental 2736
disabilities shall pay to the bureau of criminal identification 2737
and investigation the fee prescribed pursuant to division (C)(3) 2738
of section 109.572 of the Revised Code for each criminal records 2739
check requested and conducted pursuant to this section. 2740

(H)(1) Any report obtained pursuant to this section is not a 2741
public record for purposes of section 149.43 of the Revised Code 2742
and shall not be made available to any person, other than the 2743
applicant who is the subject of the records check or criminal 2744
records check or the applicant's representative, the board 2745
requesting the records check or criminal records check or its 2746
representative, the department of mental retardation and 2747
developmental disabilities, and any court, hearing officer, or 2748
other necessary individual involved in a case dealing with the 2749
denial of employment to the applicant or the denial, suspension, 2750
or revocation of a certificate or evidence of registration under 2751
section 5126.25 of the Revised Code. 2752

(2) An individual for whom a county board superintendent has 2753
obtained reports under this section may submit a written request 2754
to the county board to have copies of the reports sent to any 2755
state agency, entity of local government, or private entity. The 2756
individual shall specify in the request the agencies or entities 2757
to which the copies are to be sent. On receiving the request, the 2758
county board shall send copies of the reports to the agencies or 2759
entities specified. 2760

A county board may request that a state agency, entity of 2761
local government, or private entity send copies to the board of 2762

any report regarding a records check or criminal records check 2763
that the agency or entity possesses, if the county board obtains 2764
the written consent of the individual who is the subject of the 2765
report. 2766

(I) Each county board superintendent shall request the 2767
registrar of motor vehicles to supply the superintendent with a 2768
certified abstract regarding the record of convictions for 2769
violations of motor vehicle laws of each applicant who will be 2770
required by the applicant's employment to transport individuals 2771
with mental retardation or developmental disabilities or to 2772
operate the board's vehicles for any other purpose. For each 2773
abstract provided under this section, the board shall pay the 2774
amount specified in section 4509.05 of the Revised Code. 2775

(J) The county board superintendent shall provide each 2776
applicant with a copy of any report or abstract obtained about the 2777
applicant under this section. At the request of the director of 2778
mental retardation and developmental disabilities, the 2779
superintendent also shall provide the director with a copy of a 2780
report or abstract obtained under this section. 2781

(K)(1) The county board superintendent shall inform each 2782
person, at the time of the person's initial application for 2783
employment, that the person is required to provide a set of 2784
impressions of the person's fingerprints and that a criminal 2785
records check is required to be conducted and satisfactorily 2786
completed in accordance with section 109.572 of the Revised Code 2787
if the person comes under final consideration for appointment or 2788
employment as a precondition to employment in a position. 2789

(2) A board may employ an applicant pending receipt of 2790
reports requested under this section. The board shall terminate 2791
employment of any such applicant if it is determined from the 2792
reports that the applicant failed to inform the county board that 2793
the applicant had been convicted of or pleaded guilty to any of 2794

the offenses listed or described in division (E) of this section. 2795

(L) The board may charge an applicant a fee for costs it 2796
incurs in obtaining reports, abstracts, or fingerprint impressions 2797
under this section. A fee charged under this division shall not 2798
exceed the amount of the fees the board pays under divisions (G) 2799
and (I) of this section. If a fee is charged under this division, 2800
the board shall notify the applicant of the amount of the fee at 2801
the time of the applicant's initial application for employment and 2802
that, unless the fee is paid, the board will not consider the 2803
applicant for employment. 2804

(M) The department of mental retardation and developmental 2805
disabilities shall adopt rules pursuant to Chapter 119. of the 2806
Revised Code to implement this section and section 5126.281 of the 2807
Revised Code, including rules specifying circumstances under which 2808
a county board or contracting entity may hire a person who has 2809
been convicted of or pleaded guilty to an offense listed or 2810
described in division (E) of this section but who meets standards 2811
in regard to rehabilitation set by the department. The rules may 2812
not authorize a county board or contracting entity to hire an 2813
individual who is included in the registry established under 2814
section 5123.52 of the Revised Code. 2815

Sec. 5126.30. As used in sections 5126.30 to 5126.34 of the 2816
Revised Code: 2817

(A) "Adult" means a person eighteen years of age or older 2818
with mental retardation or a developmental disability. 2819

(B) "Caretaker" means a person who is responsible for the 2820
care of an adult by order of a court, including an order of 2821
guardianship, or who assumes the responsibility for the care of an 2822
adult as a volunteer, as a family member, by contract, or by the 2823
acceptance of payment for care. 2824

(C) "Abuse" has the same meaning as in section 5123.50 of the Revised Code, except that it includes a misappropriation, as defined in that section.

(D) "Neglect" has the same meaning as in section 5123.50 of the Revised Code.

(E) "Exploitation" means the unlawful or improper act of a caretaker using an adult or an adult's resources for monetary or personal benefit, profit, or gain, including misappropriation, as defined in section 5123.50 of the Revised Code, of an adult's resources.

(F) "Working day" means Monday, Tuesday, Wednesday, Thursday, or Friday, except when that day is a holiday as defined in section 1.14 of the Revised Code.

~~(F)~~(G) "Incapacitated" means lacking understanding or capacity, with or without the assistance of a caretaker, to make and carry out decisions regarding food, clothing, shelter, health care, or other necessities, but does not include mere refusal to consent to the provision of services.

(H) "Emergency protective services" means protective services furnished to a person with mental retardation or a developmental disability to prevent immediate physical harm.

(I) "Protective services" means services provided by the county board of mental retardation and developmental disabilities to an adult with mental retardation or a developmental disability for the prevention, correction, or discontinuance of an act of as well as conditions resulting from abuse, neglect, or exploitation.

(J) "Protective service plan" means an individualized plan developed by the county board of mental retardation and developmental disabilities to prevent the further abuse, neglect, or exploitation of an adult with mental retardation or a

<u>developmental disability.</u>	2855
<u>(K) "Substantial risk" has the same meaning as in section 2901.01 of the Revised Code.</u>	2856
<u>(L) "Party" means all of the following:</u>	2857
<u>(1) An adult who is the subject of a probate proceeding under sections 5126.30 to 5126.33 of the Revised Code;</u>	2858
<u>(2) A caretaker, unless otherwise ordered by the probate court;</u>	2859
<u>(3) Any other person designated as a party by the probate court including but not limited to, the adult's spouse, custodian, guardian, or parent.</u>	2860
<u>(M) "Board" has the same meaning as in section 5126.02 of the Revised Code.</u>	2861
Sec. 5126.33. (A) A county board of mental retardation and developmental disabilities may file a complaint with the probate court of the county in which an adult with mental retardation or a developmental disability resides for an order authorizing the board to arrange services described in division (C) of section 5126.31 of the Revised Code for that adult if <u>the adult is eligible to receive services or support under section 5126.041 of the Revised Code and</u> the board has been unable to secure consent. The complaint shall include:	2862
(1) The name, age, and address of the adult;	2863
(2) Facts describing the nature of the abuse or , <u>neglect, or exploitation</u> and supporting the board's belief that services are needed;	2864
(3) The types of services proposed by the board, as set forth in the individualized protective service plan prepared pursuant to <u>described in division (J) of section 5126.31 5126.30</u> of the	2865

Revised Code and filed with the complaint; 2884

(4) Facts showing the board's attempts to obtain the consent 2885
of the adult or the adult's guardian to the services. 2886

(B) The board shall give the adult notice of the filing of 2887
the complaint and in simple and clear language shall inform the 2888
adult of the adult's rights in the hearing under division (C) of 2889
this section and explain the consequences of a court order. This 2890
notice shall be personally served upon ~~the adult~~ all parties, and 2891
also shall be given to ~~the adult's caretaker~~, the adult's legal 2892
counsel, if any, and the legal rights service. The notice shall be 2893
given at least twenty-four hours prior to the hearing, although 2894
the court may waive this requirement upon a showing that there is 2895
a substantial risk that the adult will suffer immediate physical 2896
harm in the twenty-four hour period and that the board has made 2897
reasonable attempts to give the notice required by this division. 2898

(C) Upon the filing of a complaint for an order under this 2899
section, the court shall hold a hearing at least twenty-four hours 2900
and no later than seventy-two hours after the notice under 2901
division (B) of this section has been given unless the court has 2902
waived the notice. ~~The adult~~ All parties shall have the right to 2903
be present at the hearing, present evidence, and examine and 2904
cross-examine witnesses. The Ohio Rules of Evidence shall apply to 2905
a hearing conducted pursuant to this division. The adult shall be 2906
represented by counsel unless the court finds that the adult has 2907
made a voluntary, informed, and knowing waiver of the right to 2908
counsel. If the adult is indigent, the court shall appoint counsel 2909
to represent the adult. The board shall be represented by the 2910
county prosecutor or an attorney designated by the board. 2911

(D)(1) The court shall issue an order authorizing the board 2912
to arrange the protective services if it finds, on the basis of 2913
clear and convincing evidence, all of the following: 2914

- (a) The adult has been abused ~~or~~, neglected, or exploited; 2915
- (b) The adult is incapacitated; 2916
- (c) There is a substantial risk to the adult of immediate 2917
physical harm or death; 2918
- (d) The adult is in need of the services; 2919
- (e) No person authorized by law or court order to give 2920
consent for the adult is available or willing to consent to the 2921
services. 2922
- (2) The board shall develop a detailed protective service 2923
plan describing the services that the board will provide, or 2924
arrange for the provision of, to the adult to prevent further 2925
abuse, neglect, or exploitation. The board shall submit the plan 2926
to the court for approval. The protective service plan may be 2927
changed only by court order. 2928
- (3) In formulating the order, the court shall consider the 2929
individual protective service plan and shall specifically 2930
designate the services that are necessary to deal with the abuse 2931
~~or~~, neglect, or exploitation or condition resulting from abuse ~~or~~, 2932
neglect, or exploitation and that are available locally, and 2933
authorize the board to arrange for these services only. The court 2934
shall limit the provision of these services to a period not 2935
exceeding ~~fourteen days~~ six months, renewable for an additional 2936
~~fourteen-day~~ six-month period on a showing by the board that 2937
continuation of the order is necessary. 2938
- (E) If the court finds that all other options for meeting the 2939
adult's needs have been exhausted, it may order that the adult be 2940
removed from the adult's place of residence and placed in another 2941
residential setting. Before issuing that order, the court shall 2942
consider the adult's choice of residence and shall determine that 2943
the new residential setting is the least restrictive alternative 2944

available for meeting the adult's needs and is a place where the adult can obtain the necessary requirements for daily living in safety. The court shall not order an adult to a hospital or public hospital as defined in section 5122.01 or a state institution as defined in section 5123.01 of the Revised Code.

(F) The court shall not authorize a change in an adult's placement ordered under division (E) of this section unless it finds compelling reasons to justify a change. The parties to whom notice was given in division (B) of this section shall be given notice of a proposed change at least five working days prior to the change.

(G) The adult, the board, or any other person who received notice of the petition may file a motion for modification of the court order at any time.

(H) The county board shall pay court costs incurred in proceedings brought pursuant to this section. The adult shall not be required to pay for court-ordered services.

(I)(1) After the filing of a complaint for an order under this section, the court, prior to the final disposition, may enter any temporary order that the court finds necessary to protect the adult with mental retardation or a developmental disability from abuse, neglect, or exploitation including, but not limited to, the following:

(a) A temporary protection order;

(b) An order requiring the evaluation of the adult;

(c) An order requiring a party to vacate the adult's place of residence or legal settlement, provided that, subject to division (K)(1)(d) of this section, no operator of a residential facility licensed by the department may be removed under this division;

(d) In the circumstances described in, and in accordance with

the procedures set forth in, section 5123.191 of the Revised Code,
an order of the type described in that section that appoints a
receiver to take possession of and operate a residential facility
licensed by the department.

2975
2976
2977
2978

(2) The court may grant an ex parte order pursuant to this
division on its own motion or if a party files a written motion or
makes an oral motion requesting the issuance of the order and
stating the reasons for it if it appears to the court that the
best interest and the welfare of the adult require that the court
issue the order immediately. The court, if acting on its own
motion, or the person requesting the granting of an ex parte
order, to the extent possible, shall give notice of its intent or
of the request to all parties, the adult's legal counsel, if any,
and the legal rights service. If the court issues an ex parte
order, the court shall hold a hearing to review the order within
seventy-two hours after it is issued or before the end of the next
day after the day on which it is issued, whichever occurs first.
The court shall give written notice of the hearing to all parties
to the action.

2979
2980
2981
2982
2983
2984
2985
2986
2987
2988
2989
2990
2991
2992
2993

Sec. 5126.331. (A) A probate court, through a probate judge
or magistrate, may issue by telephone an ex parte emergency order
authorizing any of the actions described in division (B) of this
section if all of the following are the case:

2994
2995
2996
2997

(1) The court receives notice from the county board of mental
retardation and developmental disabilities, or an authorized
employee of the board, that the board or employee believes an
emergency order is needed as described in this section.

2998
2999
3000
3001

(2) The adult who is the subject of the notice is eligible to
receive services or support under section 5126.041 of the Revised
Code.

3002
3003
3004

(3) There is reasonable cause to believe that the adult is incapacitated. 3005
3006

(4) There is reasonable cause to believe that there is a substantial risk to the adult of immediate physical harm or death. 3007
3008

(B) An order issued under this section may authorize the county board of mental retardation and developmental disabilities to do any of the following: 3009
3010
3011

(1) Provide, or arrange for the provision of, emergency protective services for the adult; 3012
3013

(2) Remove the adult from the adult's place of residence or legal settlement; 3014
3015

(3) Remove the adult from the place where the abuse, neglect, or exploitation occurred. 3016
3017

(C) A court shall not issue an order under this section to remove an adult from a place described in division (B)(2) or (3) of this section until the court is satisfied that reasonable efforts have been made to notify the adult and any person with whom the adult resides of the proposed removal and the reasons for it, except that, the court may issue an order prior to giving the notice if one of the following is the case: 3018
3019
3020
3021
3022
3023
3024

(1) Notification could jeopardize the physical or emotional safety of the adult. 3025
3026

(2) The notification could result in the adult being removed from the court's jurisdiction. 3027
3028

(D) An order issued under this section shall be in effect for not longer than twenty-four hours, except that if the day following the day on which the order is issued is a weekend-day or legal holiday, the order shall remain in effect until the next business day. 3029
3030
3031
3032
3033

(E)(1) Except as provided in division (E)(2) of this section, 3034

not later than twenty-four hours after an order is issued under 3035
this section, the county board or employee that provided notice to 3036
the probate court shall file a complaint with the court in 3037
accordance with division (A) of section 5126.33 of the Revised 3038
Code. 3039

(2) If the day following the day on which the order was 3040
issued is a weekend-day or a holiday, the county board or employee 3041
shall file the complaint with the probate court on the next 3042
business day. 3043

(3) Except as provided in section 5126.332 of the Revised 3044
Code, proceedings on the complaint filed pursuant to this division 3045
shall be conducted in accordance with section 5126.33 of the 3046
Revised Code. 3047

Sec. 5126.332. (A) If an order is issued pursuant to section 3048
5126.331 of the Revised Code, the court shall hold a hearing not 3049
later than twenty-four hours after the issuance to determine 3050
whether there is probable cause for the order, except that if the 3051
day following the day on which the order is issued is a 3052
weekend-day or legal holiday, the court shall hold the hearing on 3053
the next business day. 3054

(B) At the hearing, the court: 3055

(1) Shall consider the adult's choice of residence and 3056
determine whether protective services are the least restrictive 3057
alternative available for meeting the adult's needs; 3058

(2) May issue temporary orders to protect the adult from 3059
immediate physical harm, including, but not limited to, temporary 3060
protection orders, evaluations, and orders requiring a party to 3061
vacate the adult's place of residence or legal settlement; 3062

(3) May order emergency protective services. 3063

(C) A temporary order issued pursuant to division (B)(2) of 3064

this section is effective for thirty days. The court may renew the order for an additional thirty-day period.

3065
3066

Sec. 5126.333. Any person who has reason to believe that there is a substantial risk to an adult with mental retardation or a developmental disability of immediate physical harm or death and that the responsible county board of mental retardation and developmental disabilities has failed to seek an order pursuant to section 5126.33 or 5126.331 of the Revised Code may notify the department of mental retardation and developmental disabilities. Within twenty-four hours of receipt of such notice, the department shall cause an investigation to be conducted regarding the notice. The department shall provide assistance to the county board to provide for the health and safety of the adult as permitted by law.

3067
3068
3069
3070
3071
3072
3073
3074
3075
3076
3077
3078

Section 2. That existing sections 109.572, 313.12, 2108.50, 2151.421, 2311.14, 2930.03, 5120.173, 5123.081, 5123.50, 5123.51, 5123.61, 5123.99, 5126.28, 5126.30, and 5126.33 of the Revised Code are hereby repealed.

3079
3080
3081
3082

Section 3. The Department of Mental Retardation and Developmental Disabilities shall adopt rules pursuant to Chapter 119. of the Revised Code that provide standards for the substantiation by the Department and by county boards of mental retardation of reports of abuse or neglect filed under section 5123.61 of the Revised Code.

3083
3084
3085
3086
3087
3088

Section 4. Section 2151.421 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 374, Sub. H.B. 510, and Am. Sub. S.B. 221 all of the 124th General Assembly. Section 5126.28 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 538 and Sub. S.B. 171 of the 123rd General Assembly. The

3089
3090
3091
3092
3093
3094

General Assembly, applying the principle stated in division (B) of 3095
section 1.52 of the Revised Code that amendments are to be 3096
harmonized if reasonably capable of simultaneous operation, finds 3097
that the composites are the resulting versions of the sections in 3098
effect prior to the effective date of the sections as presented in 3099
this act. 3100